

STATE CAPTURE INQUIRY
PARKTOWN, JOHANNESBURG

29 AUGUST 2018

SESSION 1 – 4.

DAY 6.

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Session 1

CHAIRPERSON: Ms Sello.

ADV MAHLAPE SELLO SC: Thank you Chair.

CHAIRPERSON: Good morning Ms Mentor.

MS VYTJIE MENTOR: Good morning Chair.

CHAIRPERSON: Are you well this morning.

ADV MAHLAPE SELLO SC: Ms Mentor, please switch on your mic and pull it closer to you if you can.

CHAIRPERSON: Good morning.

10 **MS VYTJIE MENTOR**: Good morning Chairperson.

CHAIRPERSON: Are you well this morning?

MS VYTJIE MENTOR: I am well thank you very much Chairperson.

CHAIRPERSON: I just want to confirm that arrangements that were made for you last evening were satisfactory to you?

MS VYTJIE MENTOR: They were highly satisfactory Chair, thank you very much.

CHAIRPERSON: Thank you very much. Ms Sello?

ADV MAHLAPE SELLO SC: Thank you Chair. Ms Mentor we undertook, not we because I bind you, I will correct myself. I undertook before the Chair yesterday to complete your testimony within the hour. We are aware of your circumstances yesterday and the Chair
20 has inquired about whether the arrangements were satisfactory to you. I want to inquire how you are, would you like us to complete, would you like us to continue at this time?

MS VYTJIE MENTOR: Thank you very much madam, I would like us to continue and I am okay thank you.

ADV MAHLAPE SELLO SC: Okay, I thank you for that assurance. Ms Mentor, when we parted yesterday, we were dealing with two statements. I had submitted and it's marked D5, your handwritten statement to the South African Police. We had dealt in your file D1 from pages 150 which one of the statements received from the Hawks you periodically referred to that statement as the typed statement that has got manuscript and signatures on it and you kept referring to it as the corrupted statement, is that so?

MS VYTJIE MENTOR: That's so madam.

10 **ADV MAHLAPE SELLO SC**: So now, just we are clarified going forward, henceforth when we make reference to Ms Mentor's statement, which one should we have regard to?

MS VYTJIE MENTOR: Please refer to my statement as my original handwritten statement madam.

ADV MAHLAPE SELLO SC: Thank you and for the record that would be D5. I now intend to move to the next statement but before I do so, with the Chair's permission I would like to finalise an issue and Chair, this arises from D4 which is the complete intervention application that I submitted yesterday. That's one of the documents Ms Mentor was still to apply her mind to so I stood the question down until this morning and
20 with your permission I would like to pursue it.

CHAIRPERSON: That's fine, thank you.

ADV MAHLAPE SELLO SC: Chair, I now refer to D4. It's the Intervention Application.

CHAIRPERSON: Maybe one of the Counsel could...

ADV MAHLAPE SELLO SC: Can give you a new D4, apologies Chair. Now, just to take a step back. In your statement before this Commission and to be precise, at paragraph 65 at page 19, it is that file on the spine should be written, Mentor's Main Bundle or Mentor's Bundle. Can you locate by you there?

MS VYTJIE MENTOR: Is it D1?

ADV MAHLAPE SELLO SC: D1 thank you.

MS VYTJIE MENTOR: You are referring to which page madam?

ADV MAHLAPE SELLO SC: Page 19, paragraph 65. Now at paragraph 65 you are dealing with your trip to Johannesburg from Cape Town on the day you met the President
10 at the Saxonwold home. Now, at 65, for the record, you indicate when you arrived at the airport Johannesburg, you were met by two Indian men. *"One of whom was holding a placard with my name, they were Atul Gupta and Rajesh Gupta"*, previously I paused to interrupt myself, previously you indicated that you state the names here because you subsequently came to learn who they were, their names?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: We continue, *"the two men escorted me to the vehicle, I should mention that even though I had briefly encountered them on my visit to China, I believe that I only recognised one of them and even then I did not pay attention or registered that they were the Gupta brothers when they came to collect me at the airport."*
20 Do you see that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: I had an opportunity to consider your affidavit in the Intervention Application and that's D5, the document that had just been handed to you now.

MS VYTJIE MENTOR: I have it before me ma'am.

ADV MAHLAPE SELLO SC: Thank you and as we indicated, I think we went through this yesterday, D5 as your Intervention Application and deposed to by yourself or at least submitted on, I am correct Chair, D4?

CHAIRPERSON: Okay, D4 is the Intervention Application, D5 is the witness original handwritten statement.

10 **ADV MAHLAPE SELLO SC**: I apologise for the confusion, D4 ma'am.

MS VYTJIE MENTOR: It's D4 ma'am.

ADV MAHLAPE SELLO SC: Now you deposed to that in October 2016.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Now in paragraph 9 of the affidavit in D4, it currently should be page 235.

MS VYTJIE MENTOR: Yes ma'am.

20 **ADV MAHLAPE SELLO SC**: The following is noted and I quote: "When I arrived at OR Tambo International airport, Mr Gupta met me. I was surprised and had never met Mr Gupta before. Mr Gupta informed me that the President was unavailable". Do you see that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: You understand then that these are two conflicting statements. In the one you say you recognised one of the Guptas and in this particular affidavit you said you had never met Mr Gupta before.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Can you explain to the Chairperson this contradiction?

MS VYTJIE MENTOR: Through you Chair, this intervention was an urgent application placed before the High Court of the Gauteng Division to deal with the matter of the Public Protector report to intervene in the President's terms to have the report not published or made public. It was an urgent application and as I said yesterday, the circumstances
10 around my visit to Saxonwold and Sahara were not the issue at the centre. The issue at the centre was the Public Protector's report and my intervention to plead with the Court that they do not afford the President, his request, not to have it published. The process was hurried because it was an urgent application and I had not personally consulted with my legal team. I had never even met them before. They were sitting in Johannesburg, I was in Cape Town and hurriedly they first had to compile information from what was there for them in the media but my focus was the issues around the Public Protector report. In so far as there might be errors that are in that document that is D4 before us, it will be errors that emanated because of the hurried process that I had to read quickly, very fast and concentrate mainly on the issue at hand which was the issue of the Public Protector
20 report and its report and that the basis of the collation of the information here, was from what was there in the media but I take full responsibility that even if it was an urgent Court application, you have to read very carefully so the same error that this error occurred in the same way as the error or contradiction that we handled with that surrounded the issue of Ms Kaunda.

ADV MAHLAPE SELLO SC: And perhaps in furnished to you and for the sake of completion, I must point out that in your interview with the Public Protector as per the transcript of 21st July, 2016, at page 88, starting at page 87, line 24.

MS VYTJIE MENTOR: I found 24 ma'am.

ADV MAHLAPE SELLO SC: On to page 88 you say they were describing the two Indian gentlemen who collected you from the airport, they were wearing dark sunglasses and then you indicated that dark glasses, my apologies, *“they were wearing black suits, they had communication ear pieces and they had the same things in China. I mean, I saw the same, that is why in China I wondered if but I recognised only one of them, of the two*
10 *people that fetched me from the airport”* and Advocate Kanyane poses a question to you as one of the ones you had seen in China and you responded to on line 9, “yes, one of the ones that do, Mr Zuma young”, you see that?

MS VYTJIE MENTOR: I am struggling to find that line ma'am?

ADV MAHLAPE SELLO SC: Are you at page 88?

MS VYTJIE MENTOR: I beg yours, I was at 89.

ADV MAHLAPE SELLO SC: Oh sorry, 88. At the top of 88, line 1, I read from the first, line 1 starts with “Indian guys”. So I read from thereafter and I read up to line 9 including, Mr Kanyane’s question and your response. Mr Kanyane’s question seeking to clarify whether you recognised one of them as one of the people you had seen in China.

20 **MS VYTJIE MENTOR:** Yes, I found it.

ADV MAHLAPE SELLO SC: You found the place, thank you. I point out that to say in a previous interview with the Public Protector, you had indicated that you recognised them

and in this Intervention Application which is a subsequent document you state as you do that you had never met Mr Gupta before.

MS VYTJIE MENTOR: And I've attributed that to the hurriedness of the process and how information was collated and the separation between myself and distance geographically between myself and the legal team and that the urgencies I had to intervene in.

ADV MAHLAPE SELLO SC: Just for the record, where were you based at the time that urgent Intervention Application was prepared?

MS VYTJIE MENTOR: I was based in Cape Town in Durbanville madam.

ADV MAHLAPE SELLO SC: And your attorneys?

10 **MS VYTJIE MENTOR**: They were in Sandton Johannesburg.

ADV MAHLAPE SELLO SC: So you had been communicating electronically as regards that application.

MS VYTJIE MENTOR: Even electronic communication was difficult because my email is constantly hacked in, even around that time it was, we were largely communicating by telephone but in fact at times when my attorneys had to communicate with my daughter's email so it was using my email when it works and largely telephonic communication.

ADV MAHLAPE SELLO SC: Okay thank you, that is the issue I wanted to clarify. You have provided a clarification to the Chair and I would now want us to pick up on the Hawks statements to be precise. As I indicated they start at D1, page 150 and from 150
20 to 158 I will use your words and call that quote and unquote the corrupted version and that's the one we dealt with yesterday.

CHAIRPERSON: What was the page number again?

ADV MAHLAPE SELLO SC: 150 Chair of D1. And then at 150 to 158, that's the one you referred to as the corrupted version.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Now, I want us to turn our attention to 159. There is a second statement also obtained by the Commission from the Hawks.

MS VYTJIE MENTOR: I found it ma'am.

ADV MAHLAPE SELLO SC: It has a small typo and the top, the heading is called, "Supplementary Affidavit" but for purposes I think of this hearing we can refer to it as a supplementary affidavit.

10 **MS VYTJIE MENTOR**: It's fine ma'am.

ADV MAHLAPE SELLO SC: When you go the end of that document at 164, it is signed and it is commissioned. It indicates that it was commissioned on the 28th June, 2016, at Durbanville at 11:15. You see that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Now, can you tell us how this document came about and its contents?

MS VYTJIE MENTOR: Madam, let me start with the contents of the document. Firstly, for what it is worth, I don't know, through the Chairperson you will assist me with the fact if it's a small thing to me, it's not small to the Commission and the Court and the Chair and
20 to you ma'am it might not be an important matter but for me it is that I don't see any stamp. When you certify or you are a Commissioner of Oath because I was once a Commissioner of Oath myself, when you exercise that duty you don't only sign but you put your stamp with a date so that's the first thing. Then I will go back to the issue of the

content. This document is supposed to, if we ignore the typo in it's caption, it's supposed to be a supplementary statement but it doesn't say what is it supplementing. I think that Hawks and the Police are trained officials that should handle documents with care and with diligence and I myself, I have the same approach so it's supplementary but I don't know what it is supplementing because the caption is not clearly stating what it is supplementing. I don't know if it is supplementing my what I call, my statement, the handwritten one or if it is supplementing the one that I refer to as the corrupted one. That's my first issue and if I assume that it is supplementing my original statement, when I read the contents of this document, I find that they are sufficiently covered, the aspects
 10 that this supplementary document is meant to, the content is sufficiently and clearly and subsequently covered in my statement so I don't know what would be the purpose of supplementing issues that are very clear and straight forward and well covered in my statement and I wonder what would be the purpose or what was the purpose.

ADV MAHLAPE SELLO SC: Okay.

MS VYTJIE MENTOR: It was in my understanding of supplementing. You supplement an issue or if you are supplementing information in a document, you supplement aspects that are not clear or that are not covered or that were outstanding so I don't understand why I would these issues are not insufficient, are not well articulated, are well covered in my original statement. And then, this document madam, if I could refer you through the
 20 Chairperson to page 164 which is the last part of this statement, the last page, on the last sentence there, there is a date. It is the 28th June, 2016 and if I may again through the Chair refer you to its first page, which is at page 159.

ADV MAHLAPE SELLO SC: Sorry, Ms Mentor, perhaps if you put the file in front of you so that when you speak you are facing the mic directly, your voice fades away.

MS VYTJIE MENTOR: The problem is, its about my eyesight.

ADV MAHLAPE SELLO SC: That's why I thought maybe if it is directly in front of you it's easier and your voice will carry better to the microphone.

MS VYTJIE MENTOR: Thank you Chair, thank you madam. I am drawing your attention to page 159, the first page of the statement, the second bullet. It begins as, this is supplementary affidavit obtained on Friday and there is a date there. That date is the 23rd June, so I wonder what was happening with me and with the Hawks in that we sign a document, a document is signed, there is a signature on page 164, forgive me for taking you backwards and forth. That signature looks like my signature so and there is
10 somebody else's signature there that signs as Commissioner of Oath and we sign on the 28th and yet this document is obtained on the 23rd, so I don't know how possible is that there would be those two contradicting dates and Chairperson, when you sign a document, you say where you sign it at. This Commissioner signed this document at the old SARS building at West Street in Bellville.

ADV MAHLAPE SELLO SC: I see that.

MS VYTJIE MENTOR: I have no idea where that place is, I have never been to it, I might have driven past the SARS building, I am assisted with tax, I don't know so if we both signed on this page with this Commissioner of Oath, it means we signed together in this building which is SARS building in Bellville but as I stated to the Commission through you
20 Chair, all my handling of the matters that pertain to my statement and all the interventions around it were done in my house because from the onset I made it clear that I would not like to be dealing with this matter in offices where or Police Stations where other people could hear or see the developments around the charges that I wanted pressed and investigated.

ADV MAHLAPE SELLO SC: Okay, is there any other issue you would like the Chair to bear in mind around the statements.

CHAIRPERSON: Well I am sorry Ms Sello, Ms Mentor, if I understand you correctly, are you saying that you don't know this building where the Commissioner of Oaths indicates you took the oath in and he or she administered the oath to you, i.e. old SARS building, HA West Street, Bellville. You say you don't know that building or you have no recollection of ever being there?

MS VYTJIE MENTOR: I have no recollection of ever being there with the Commissioner of Oath where myself and him we deal with the documents and we sign them together to
10 say that we are officialising the document the Commissioner is. I know where the building is, that's not the issue Chair.

CHAIRPERSON: Yes, but you are saying you have no recollection of you taking an oath for a document such as this in that building in front of this Commissioner of Oaths.

MS VYTJIE MENTOR: That's what I am saying Chair.

CHAIRPERSON: Yes and I see that the surname of the Commissioner of Oaths there appears to be Nxoloba. Do you know anybody by that surname that could be this one?

MS VYTJIE MENTOR: Chair, I don't recall this surname.

CHAIRPERSON: Okay and the signature of the deponent there, you said it does look like yours?

20 **MS VYTJIE MENTOR:** Chair I must also submit it to you Chair that because I was having so much difficulties with this document and the next one, since I received it, I have been battling and I have been saying to my legal team, I have serious problems with these documents and what confuses me, I don't want to disown my signature because this

looks like my signature. There was a time when I looked at it, that signature on 164 and I said to my legal time, when I put my signature, my "P" always closed the loop on top so I said it looks like mine even if the loop is not closed and then I said to them, could you please, the Commissioner, can you obtain the original documents which were placed before me and that signature, the original document of 164, my signature is in pen showing that it looks like my signature when I look at it but all the aspects that I have highlighted confuse me in that they don't make sense, it doesn't make sense that I would supplement the contact that I were canvassed in my original, it doesn't say what document am I supplementing, the days are not corresponding, I did not sign any
 10 document in the SARS building with the person that is the Commissioner of Oath that has a surname that is Nxoloba so I would not want to say the signature does not look like mine, it does look like mine.

CHAIRPERSON: So, would it be fair to say your position therefore in regard to the signature is that if indeed this is your signature, you could not have signed it in that building? You must have signed elsewhere?

MS VYTJIE MENTOR: I could not have signed it in this building and the dates are also not exactly helping me because they, yes.

CHAIRPERSON: Well, maybe when I said you could not have signed it in the building, maybe that's stronger than you might want to put it. Earlier on you said you have no
 20 recollection of signing a document there, there can be a big difference between the two scenarios I have put. I don't want you to agree to something that you might not appreciate. So if I say you could not have signed it in that building, it means you are saying it is impossible that you signed it in that building but you might not be wanting to go that far, you might be wanting to simply say, I doubt that, it looks like my signature but

I am not certain but if it is my signature, chances are that I signed it somewhere, not in that building.

MS VYTJIE MENTOR: Yes, it looks like my signature.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO SC: Thank you Chair. Ms Mentor, you've had opportunity to apply your mind to this document. Now, with reference to Mentor Statement to SAPS, is there any fact, oh D5, apologies Chair, D5, the handwritten one.

CHAIRPERSON: She suggested then you agreed that we call it her original handwritten statement.

10 **ADV MAHLAPE SELLO SC**: Oh, I suggested her statement to distinguish it from the corrupted statement so when you consider the two documents now, the supplementary affidavit, is there any new fact that it introduces that is not captured in the Mentor Statement, D5?

CHAIRPERSON: I thought she answered that already, didn't she, she said it doesn't seem to supplement anything because if you look at the content of that statement at page 159 to 164, everything that it says there is already contained in D5, am I correct Ms Mentor or would you like to double check?

MS VYTJIE MENTOR: Broadly Chair, the supplement does not have anything, I did not pick up anything in the supplement that was not covered in my statement so that's why I
20 am battling with why would I supplement?

CHAIRPERSON: Okay no, that's fine, Counsel we will take that further if she wants to but it's important that if you have picked up something, you say so, if you didn't pick up anything that's new, you say so.

MS VYTJIE MENTOR: As I address you now Chair and madam, I have not picked up anything new.

ADV MAHLAPE SELLO SC: Okay. So to get dates in order and not to get confused, may I refer you to D1, your statement, page 33. Paragraph 118. No, your statement to the Commission, I apologise, D1, page 33, paragraph 118.

MS VYTJIE MENTOR: Yes ma'am I am there.

ADV MAHLAPE SELLO SC: Please keep your finger there and go to this "Corrupted Statement" starting at page 150 where the signature appears at 158. You located 150.

MS VYTJIE MENTOR: I located 158 ma'am.

10 **ADV MAHLAPE SELLO SC**: 158 yes. Now, the statement that ends at 158 has got a date on the left just before the time and place and reads, 2016-05-09. Do you see that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Now, if you go to D5.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: And to the last page of D5 and D5 being Mentor Statement to SAPS, page 286.

CHAIRPERSON: Ms Sello, you want to stick to one name for it. You say Mentor Statement SAPS, that's to D5 they talk about isn't it?

ADV MAHLAPE SELLO SC: That's D5 I refer to.

20 **CHAIRPERSON**: I think it's better to her original handwritten statement.

ADV MAHLAPE SELLO SC: Oh, original handwritten statement.

CHAIRPERSON: That's what she requested we call it and I think it makes sense because then we can't make a mistake about which one it is.

ADV MAHLAPE SELLO SC: Indeed Chair. Mentor original statement, D5. Now at the last page of that, at 286 where you signed, it's dated 09-05-2016, you confirm that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Now coming back to your statement, you say to the Commission at 118, "*shortly afterwards on or about 26 May 2016, I went to lay charges against Mr Zuma and some Ministers of Cabinet and certain Board members*", goes on. Can you explain now which is the operative date on which you laid the complaint?

10 **MS VYTJIE MENTOR**: I laid the complaint on the 9th May, madam Chair.

ADV MAHLAPE SELLO SC: As per D5, the date appearing on D5.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Okay.

MS VYTJIE MENTOR: Do you want me to speak to 26, 26 May?

ADV MAHLAPE SELLO SC: Please, it's in paragraph 118 of your statement.

MS VYTJIE MENTOR: Yes ma'am, the on or about 26 May, the date of the 26 May was an important milestone reference point in relation to, firstly, I want to say that that 26th May is inaccurate, it is too far from the...

ADV MAHLAPE SELLO SC: Inaccurate you say?

20 **MS VYTJIE MENTOR**: Let me say it's too far. If you compare 26 to the 9th, there is a two week difference but you can see that I said on or about the 26th but I want to explain to you how the 26th was a reference point in terms of timeline.

ADV MAHLAPE SELLO SC: Okay, please do.

MS VYTJIE MENTOR: I knew that I wanted to lay charges before the 26th May because on the 26th May my sister was going to be admitted and operated on in Kimberley and I was to depart to go and nurse her because she stayed alone and the 26th May remained a reference point in my mind that it's around that date that I made the statement but the date on 286 of my original handwritten statement is the correct date on which I did I laid the charges, my complaint.

ADV MAHLAPE SELLO SC: So now at 116, which date would you ask the Chairperson to note at 118?

10 **MS VYTJIE MENTOR**: I would like the Chairperson to note that date that is on my statement which is the date of the 9th May.

ADV MAHLAPE SELLO SC: So you would like us to effect that correction to your statement.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Now, if we go to page 150, the corrupted statement. At the top there is an annotation, revised on, mine doesn't quite show but then it has got a date written over 06-26, do you see that, top right corner?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Can you explain what that date is?

20 **MS VYTJIE MENTOR**: That date is the 25th, it looks like it was 23rd and it became 25th. The 5 is prominent and superimposed onto what appears to have been 3 and there is a small signature slightly to the extreme right of it, not a signature, abbreviation of her signature that looks like it relates to the correction of that date or the changing of that

date to 3 to 5 and that small thing looks like, if I may draw your attention through the Chairperson to you madam Chair, in the middle of the page, paragraph 6, you can see a similar thing so that's a "pm" when I abbreviate fast, my initial, so it show that I corrected the date there, I acknowledged that it was corrected by me because that "pm" is the "pm" when I abbreviate fast.

ADV MAHLAPE SELLO SC: Okay.

CHAIRPERSON: Is that at D1, page 150?

ADV MAHLAPE SELLO SC: 150 Chair.

CHAIRPERSON: First the witness spoke about what appears at the top where it says
10 "revised", is that right?

ADV MAHLAPE SELLO SC: That's correct Chair.

CHAIRPERSON: Did I understand her to say around what is written there at the top, there is some things that reflects initials?

ADV MAHLAPE SELLO SC: Yes.

CHAIRPERSON: Because I am trying to see where that is on what I have, is it what appears incomplete on top of 2 of 23 or 25?

ADV MAHLAPE SELLO SC: Do you understand the question?

CHAIRPERSON: Ms Mentor, I am sorry, did you say the initials at the top of page 150, whereabouts?

20 **MS VYTJIE MENTOR**: Not on top of 25 but to the left of 25 they look like an "r". They look like a free standing "r".

CHAIRPERSON: There is something that appears that I see above the 2 of 23 or 25. It is incomplete, that's what you are talking about? It is not shown in full on mine, it seems that maybe a page was put or something and not all the letters, I mean, each letter doesn't appear in full, is that the case with your page as well?

MS VYTJIE MENTOR: It's the case with my page as well Chair and I also battled with that, I tried to ask myself was this revised or is it meant to be such initial it doesn't make sense, I don't know what, I can't recall what that is but what I can figure out is the figure to the right of the date seem to be an abbreviation, my abbreviation.

10 **CHAIRPERSON**: So are you saying what appears above the 2 of 23 or 25, are your initials?

MS VYTJIE MENTOR: No Chair, I cannot make out what that is.

CHAIRPERSON: What they are, oh okay.

ADV MAHLAPE SELLO SC: Chair, may I be of assistance if I may. The Chair will recall that on Monday I think it is, we went on record to indicate that we had requested the originals and obtained them from the Hawks. They have since been handed over to the Secretariat, I hold the original of that document and I will just mention it reads, "revised on Sat", then what looks like an "r" and the date, if the Chair could satisfy himself and show the witness.

20 **CHAIRPERSON**: If you say it is like that, it's fine, I think the witness can have a look, I can see it later when you are ready and you have got copies, ja.

ADV MAHLAPE SELLO SC: So then what the witness refers to as her shortened signature is what at first blush looks like an "r" on the document just to the left of the date. Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO SC: So then Ms Mentor, the dates that we have is on the 9th September you make the original Mentor statement.

MS VYTJIE MENTOR: Not September ma'am.

ADV MAHLAPE SELLO SC: Sorry, 9th May, it's the old 9th. 9th May 2016.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: In terms of 150, page 150, either on the Saturday you say it looks like it was 23 has become 25 so I will say 23/25 June, the statement brought to you, you say by Mr Mtolo, is revised?

10 **MS VYTJIE MENTOR**: That's was written on...

ADV MAHLAPE SELLO SC: That's what's written there, okay. We go to 159 which would suggest that a supplementary is then signed in terms of page 164 on the 28th June, 2016, is that correct?

MS VYTJIE MENTOR: I have lost you madam.

ADV MAHLAPE SELLO SC: I said then the one at 159 would suggest that it was commissioned on the 28th June.

CHAIRPERSON: I am sorry, are you there Ms Mentor.

ADV MAHLAPE SELLO SC: And 164.

MS VYTJIE MENTOR: I am at 159 Chair.

20 **ADV MAHLAPE SELLO SC**: No, it start at 154, sorry, 159, it ends at 164.

CHAIRPERSON: You were confusing me.

ADV MAHLAPE SELLO SC: I will start again. The second one, supplementary, starts at 159, it's commissioned on 164 and at 164 it would appear to have been commissioned on the 28th June, 2016.

MS VYTJIE MENTOR: Yes Chair.

ADV MAHLAPE SELLO SC: And according to this 159 statement, commissioned as it is on the 28th June, 2016, the affidavit itself as per bullet 2 on page 1 of that statement at 159, was obtained on the 23 June, 2016. Do I have my dates correct according to these documents?

MS VYTJIE MENTOR: According to the document yes. It's the second bullet.

10 **ADV MAHLAPE SELLO SC**: The second bullet at 159 thank you. We then move on to the third statement obtained from the Hawks and that one starts at page 165.

MS VYTJIE MENTOR: Through you Chair.

ADV MAHLAPE SELLO SC: Yes ma'am.

CHAIRPERSON: Yes.

MS VYTJIE MENTOR: May I just ask you to give me a second to deal with something.

ADV MAHLAPE SELLO SC: By all means.

CHAIRPERSON: Ja.

20 **MS VYTJIE MENTOR**: Chair, through you, if I may go back to this what is supposed to be a supplementary and with those dates that begins at 159 and ends at 164. The middle bullet on the first page says it's obtained on the 23rd and the last page was 64, says it's signed on the 28th so I don't know how if you do an affidavit, before a Commissioner of Oath, you do it this day and you sign it this day before the Commissioner. Now this

document is obtained on the 23rd and it's signed five days later so I am also battling with it. I wanted to bring that to your attention.

ADV MAHLAPE SELLO SC: Okay. I think the Chair has noted.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO SC: So this is one of the issues.

10 **CHAIRPERSON**: Well, I am not sure what obtained is supposed to mean in the context of the affidavit. What appears at page 164 suggest that it was deposed to on the 28th June, 2016 so I am not sure the obtaining, what it means. I don't know whether Ms Mentor has seen that it's supposed to be your affidavit, whether you are able to say anything about that?

MS VYTJIE MENTOR: I also don't know what obtained Mr Chair especially if the dates are not correlating.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO SC: Chair, I think now that the one person who supposedly signed it being the witness, can't explain that, hopefully in the fullness of time, Mr or Ms doesn't indicate unfortunately Nxoloba will appear before you and perhaps provide an explanation. Thank you Chair. Are those the issues you have with that statement.

MS VYTJIE MENTOR: Those are the issues ma'am.

ADV MAHLAPE SELLO SC: Can we move onto...

20 **CHAIRPERSON**: Maybe before you move on, when did you see the statement for the first time? That is 1 at 159 – 164?

MS VYTJIE MENTOR: Chair, I remember that when I first met with the legal team of the Commission, I picked it up from them in the first meeting that because whenever I met anybody with authority to get documents, I would place it before them, they would assist me to get my statement. I learnt that there are three statements and then I said, I would like to see them but then my first question was, is my original handwritten one, one of them. It was not of them so subsequent to the first meeting, in the intervening time, in the next meeting, through my lawyers having received these statements from the Commission lawyers, I saw them. So I think I saw these statements for the first time.

CHAIRPERSON: About a month ago or two months?

10 **MS VYTJIE MENTOR**: Not two months, couple of weeks ago.

CHAIRPERSON: Okay, prior to that.

MS VYTJIE MENTOR: Prior to that I don't recall...

CHAIRPERSON: Having seen it.

MS VYTJIE MENTOR: I don't recall anything about them, I saw them a couple of weeks ago when I was preparing for this.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO SC: Thank you Chair. I then move on to the third statement, also obtained from the Hawks and that starts at page 165 and the signature page is 167. This particular one according to page 167 was commissioned on the 14th December,
20 2016 and it also bears a signature of the deponent and the Commissioning Officer, you see that?

MS VYTJIE MENTOR: Just a second please ma'am? You are taking me from 165?

ADV MAHLAPE SELLO SC: 165 – 167.

MS VYTJIE MENTOR: 167, I am there Chair.

ADV MAHLAPE SELLO SC: So I am saying at 167 it indicates that it was commissioned on the 14th December, 2016 and it's got the signature of the deponent, you see that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: You had opportunity as well to consider this document. It is titled Supplementary Statement at 165?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Can you talk to this document?

10 **MS VYTJIE MENTOR:** Thank you Chair, in a second ma'am. I beg your pardon for taking too much time.

ADV MAHLAPE SELLO SC: No take your time Ms Mentor, I am sure the Chair would indulge you.

MS VYTJIE MENTOR: Chair, also on the contents of this document, are issues that were canvassed enough in my handwritten original statement. With this similarly I battle to understand why I would again supplement information that's well articulated and well covered if I assume again that this supplement is supplementing my statement because it doesn't say what it is supplementing. And again Chair, I bring to your attention that the caption again of this document has a typo which is similar to the typo of the document we
20 dealt with earlier on. The caption in supplementary. Chair?

CHAIRPERSON: Is the typo in paragraph 2?

MS VYTJIE MENTOR: No Chair, the title of the document.

CHAIRPERSON: The title?

MS VYTJIE MENTOR: Yes Chair.

CHAIRPERSON: Supplementary statement.

MS VYTJIE MENTOR: Yes Chair, there is a typo there, there is an N that is lost that doesn't belong in supplementary. The caption in supplementary statement, both on the date, this is a document of the 14th December. What I am bringing to your attention Chair is on the 14th December and in a document that were dealing with before this one.

CHAIRPERSON: The one at 159 – 164?

10 **MS VYTJIE MENTOR**: Yes Chair. That one was in June if you go to 164, it was in June on the 28th June. This one is December 2016 on the 14th. A similar typo is made in captioning the supplementary.

CHAIRPERSON: I see that page 159 that statement there which is to the supplementary afterwards is written "supplemmentary affidavit" but the one at 165, is that where we are, at 165, doesn't say "supplemmentary affidavit", it says supplementary statement.

MS VYTJIE MENTOR: Forgive me Chair.

CHAIRPERSON: At least on the one that I am looking at.

MS VYTJIE MENTOR: Thank you Chair. Thank you. I might be seeing things that I apologise for.

20 **ADV MAHLAPE SELLO SC**: Ms Mentor, maybe you have supplementary from the previous one in your mind, the one at 165 I confirm Chair, even my copy says supplementary.

MS VYTJIE MENTOR: I was supplementary when I saw it was a document of the 14th.

ADV MAHLAPE SELLO SC: Okay now that we have clarified that, we are now at 165 – 167 and as I have indicated and you have pointed out as well, 14 December 2016. Now I would ask you to speak to this document?

MS VYTJIE MENTOR: Yes Chair, on the 14th December 2016, it's a date and this reflected on my statement to the Commission.

ADV MAHLAPE SELLO SC: Okay, perhaps let us quickly refer to that and just to give you your bearings, you deal with the report to the Hawks from page 33, paragraph 118 and the date of 14th December I locate, starting at page 34, paragraph 1-3. Going overleaf to page 35.

10 **MS VYTJIE MENTOR:** Yes Chair, if I may read that to the record for you if you please.

ADV MAHLAPE SELLO SC: Please do.

MS VYTJIE MENTOR: *“After I had made many inquiries on the progress of the charges I laid and after I had demanded my original statement from the Police and the Hawks on several occasions to no avail, in or about mid December, 2016, I received a telephone call from Advocate Mtolo and a certain Advocate Vogel of the NPA from Pretoria, they were seating together when they called me, they requested to meet with me on around the 14th December of the same year”. So Chair, on the 14th December I was supposed to meet Advocate Vogel of the NPA and Advocate Mtolo in Cape Town. They were going to fly down to meet me. That was in relation to the charges I laid in my statement. “In regard*
20 *to that meeting, that meeting did not take place. It did not take place because a day before the meeting, there was an incident that rattled me that had to do with my car that shook me a lot and I ended up being fearful to drive my car and I ended up not sleeping well that night and through the middle of the night I decided to not honour the meeting but I know that when I contacted Advocate Mtolo, I knew that in order to not make them incur*

wasteful expenditure, I had to alert them that they should not fly down because I was not in a position to meet them on the 14th so when I phoned, I could not phone but I also sent, I tried to phone, I also sent an SMS that I am not able to attend the meeting and I said to him I had fallen sick because I did not want to discuss too much by telephone what I considered to be a scare on me surrounding my car.”

ADV MAHLAPE SELLO SC: Okay.

MS VYTJIE MENTOR: “He subsequently”...

ADV MAHLAPE SELLO SC: He who ma'am?

MS VYTJIE MENTOR: Advocate Mtolo. “...responded to my SMS and acknowledged that
10 *he received it and that it is okay we are not meeting and we did not meet. On that day, I phoned my attorney of Webber Wentzel just to update her because I tried as much as possible to update them on issues surrounding all legal matters. I told her that I was supposed to have a meeting with Advocate Vogel and Advocate Mtolo. I explained the circumstances to her as short as I could as I told her I had a scare and that for that reason I was not going to expose myself on the roads. I was battling frantically to get hold of her. Finally when I got hold of her, she told me that she was at a Spar and she knew about the cancellation of the meeting.”*

ADV MAHLAPE SELLO SC: So, do I understand you correctly that there had been a
20 *scheduled meeting for the 14th December with Advocate Mtolo and Advocate Vogel which you cancelled?*

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: So you are suggesting to the Chair that that meeting never took place.

MS VYTJIE MENTOR: That meeting never took place. What I am going towards is I did not sign any document, I did not meet Mr Mtolo anywhere, we were nowhere together on the 14th December. When we, according to this document, we are supposed to have co-signed a supplementary statement together.

ADV MAHLAPE SELLO SC: Yes because at 167 it is suggested on the 14th December you signed as the deponent at 13:14 and immediately at 13:15 thereafter, I think it is Captain Mandla Mtolo, commissioned this statement so are you saying that did not take place on the 14th December?

MS VYTJIE MENTOR: Yes Chair, we did not meet.

10 **ADV MAHLAPE SELLO SC**: You are aware that Advocate Mtolo has submitted a version to this Commission dealing with the allegations you make against him in your statement to the Commission?

MS VYTJIE MENTOR: I am aware ma'am.

ADV MAHLAPE SELLO SC: And that is in D3, Chair, under the tab, Mtolo, starting at page 46.

MS VYTJIE MENTOR: I am at 46 ma'am.

ADV MAHLAPE SELLO SC: I am just waiting for the Chair to finish making notes. Thank you Chair. In this affidavit, Mr Mtolo takes issue with what you state at paragraphs 120, 121, 122 and 123 of your statement to the Commissioner. You note that.

20 **MS VYTJIE MENTOR**: I note that.

ADV MAHLAPE SELLO SC: I would like to refer you to page 50 of D3, Mr Mtolo's affidavit.

MS VYTJIE MENTOR: I am there Chair.

ADV MAHLAPE SELLO SC: D3, the applications starting at page 46, that would be Advocate Mtolo's application to this Commission Chair. It's a notice of motion and at 49 starts the actual affidavit or statement to be precise. And I indicated Chair that at 49 – 50, Advocate Mtolo deals with Ms Mentor's allegations set out in her statement, paragraphs 120, 121, 122 and 123. I have now drawn Ms Mentor's attention to page 50 in particular at paragraph 6 thereof where Advocate Mtolo addresses the allegations in paragraph 123. And in this regard, Advocate Mtolo states and I read: "*I confirm making arrangements to meet with Ms Mentor together with Advocate Vogel from the National*
10 *Prosecuting Authority in Cape Town. I aver that Ms Mentor unceremoniously cancelled the schedule meeting with myself and the said Advocate on the last minute citing illness by text message*". So it would appear that at least you and Advocate Mtolo agree as to the scheduled meeting of 14th December, 2016 that it was set except it was cancelled.

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: If that meeting was cancelled, as both you and Advocate Mtolo state, can you explain, I don't know if you can to the Chair, how it comes about that on the date of the meeting that on both your versions did not take place, you signed the document at page 165 – 167 before Advocate Mtolo. Are you able to explain that?

MS VYTJIE MENTOR: Thank you ma'am. I am just giving Chairperson chance to...

20 **CHAIRPERSON:** Yes, you may proceed.

MS VYTJIE MENTOR: Thank you Chairperson. Chair, like in the document before this what is the so-called supplementary that we dealt with before. In so far as the signature, I would like to submit that again the signature looks like my signature and I would like also to submit that I battled with that because I had not met Mr Mtolo on the 14th because my

meeting with him and Advocate Vogel did not materialise and he just confirmed from where you referred me that he also confirmed that the meeting was cancelled and we did not meet. Because I was battling with that, again I asked through you because I was stating vehemently that we did not meet. We asked for the original and again the original in pen appears like my signature but my problem is, me and Mr Mtolo, we were not together on the 14th, we did not meet. I was scheduled meeting it's true because of my scare I sent him a message and we both agreed to cancel the meeting so I am battling with that Chairperson.

CHAIRPERSON: Sorry Ms Mentor, in the paragraph in Mr Mtolo's affidavit that Counsel
 10 has just read to you mainly paragraph 6 at page 50 of D3, Mr Mtolo doesn't give a date for the meeting that was cancel. I don't know whether there was any other meeting or there may have been any other meeting relating in December that was arranged between the two of you, in other words, I just want to see whether, when the two of you talk about cancelled meeting, you are talking about the same meeting that you put at 14 December as having been planned for 14 December.

MS VYTJIE MENTOR: Chair, that is Mr Mtolo's response to my submission to the Commission which is captured under 123.

ADV MAHLAPE SELLO SC: Yes, your paragraph 123 at page 34.

MS VYTJIE MENTOR: My paragraph 123 at page 34 of my statement to the
 20 Commission.

CHAIRPERSON: And there you mentioned the date. Is it right that you just say mid December 2016.

MS VYTJIE MENTOR: I also gave a specific date. What page is it?

ADV MAHLAPE SELLO SC: It's overleaf, 123 start at the bottom of page 34, continues on to 35 at the top.

MS VYTJIE MENTOR: Okay.

CHAIRPERSON: Ja, paragraph 123 says, oh, that's when you received a call or there is a date 14th December on the last line.

MS VYTJIE MENTOR: Yes Chair.

CHAIRPERSON: Oh okay, no thank you.

MS VYTJIE MENTOR: Thank you Chair.

10 **ADV MAHLAPE SELLO SC**: Then perhaps could ask from you, if we ignore for the moment the date of the 14th December and accept it may have been an error, would you be willing to accept that? Well, it is an error made by the deponent because they also dated the 14th December, 2016 and by Advocate Mtolo who also knows it has 14 December, 2016. Would you accept that there was an error in noting the date? Suggesting?

MS VYTJIE MENTOR: An error that is made by both of us?

ADV MAHLAPE SELLO SC: Yes.

MS VYTJIE MENTOR: Chair, I need to go back to the supplementary statement we are dealing with.

ADV MAHLAPE SELLO SC: 165 – 167.

20 **CHAIRPERSON**: D3? No, no, D1.

ADV MAHLAPE SELLO SC: D1 Chair, D1.

MS VYTJIE MENTOR: Could you ask your question again please?

ADV MAHLAPE SELLO SC: No my question is it would appear at 167 that both the deponent signing at 167 and Advocate Mtolo record the date as being 14 December, 2016 and I am saying it would appear then both if that was you or you and Advocate Mtolo got the date wrong and made the exact same error, you notice that?

MS VYTJIE MENTOR: We made the same error?

ADV MAHLAPE SELLO SC: And noting the date as the 14th December when both of you say you did not meet on the 14th December.

MS VYTJIE MENTOR: I did not make any error on the 14th because I was at home. I don't ask your question ma'am.

10 **ADV MAHLAPE SELLO SC:** Let me qualify that if I may Chair. Accepting for the moment and in fact, that's why I didn't want to make it to you. At 167 suggests the deponent signed on the 14th December, 2016 so the date is entered there and it is re-entered on the same page just above Advocate Mtolo's signature and is once again 14 December 2016, you see that, and I am saying both the deponent to the statement and the person administering the oath appeared to have made, if it's an error, the same error that is the 14th December.

CHAIRPERSON: Okay, maybe let me put it this way Ms Mentor. Assuming that the signature of the deponent at page 167 is yours and that you are the one who did sign that page as a deponent, then if you are the one who gave the date that appears along your
20 signature which is 14 December 2016 or if that date was already there when you signed, then it's either because you saw the date and you thought that day was the 14th December and therefore had no problem with it or you didn't see the date even though you should have seen it. Does that make sense?

MS VYTJIE MENTOR: I think both apply Chair.

CHAIRPERSON: So you say you might have written the date in error if you are the one who wrote it but if you didn't write it, you might have seen it, it having been written by somebody else but didn't think there was anything wrong because you thought that day was the 14th.

MS VYTJIE MENTOR: If I signed the document, I would have made a mistake to say is the 14th. If I signed it.

CHAIRPERSON: And if you did sign the document but somebody else had written the 14th December and you saw the date, you would have made the mistake of thinking that day was the 14th, is that right?

10 **MS VYTJIE MENTOR**: That's right and I wonder what would have, that would be unlike me but yes.

CHAIRPERSON: I don't know if that has helped.

ADV MAHLAPE SELLO SC: That has helped somewhat and the next question will clarify it and I am going to invite you to forget the date of the 14th December, 2016, and inquire from you, do you know Advocate Mtolo? By know him, can you recognise him on sight?

MS VYTJIE MENTOR: Yes, I will recognise him on sight.

ADV MAHLAPE SELLO SC: Now have you ever deposed to an affidavit before Advocate Mtolo on any day, forget the 14th December, 2016?

MS VYTJIE MENTOR: Meaning did I ever make a statement before Advocate Mtolo?

20 **ADV MAHLAPE SELLO SC**: Yes, which you signed and he commissioned.

MS VYTJIE MENTOR: I have never made a statement before Advocate Mtolo.

ADV MAHLAPE SELLO SC: Oh okay.

CHAIRPERSON: And did you ever take an oath before Mr Mtolo?

MS VYTJIE MENTOR: I don't recall taking an oath before Mr Mtolo. I recall Mr Mtolo bringing a corrupted statement, me showing him how corrupt the statement is for instance where I said the Gupta company were given a loan of plus minus R300 million. That corrupted statement would say R3,000 million so I was saying to Mr Mtolo, this is not my statement, this is a corrupted statement, let me show you how corrupt it is, go and bring my statement Mr Mtolo's and this is June and saying I am going on annual leave, when I come back I will bring your statement. My interactions with Advocate Mtolo whenever having to do with the affidavit.

10 **ADV MAHLAPE SELLO SC**: Okay, thank you Chair. Chair, I just want to put a few questions to Ms Mentor, I was hoping to finish by quarter past eleven. With your leave Chair I may finish her off quickly which should be in the next ten minutes max. Then we take the tea adjournment, thank you Chair.

MS VYTJIE MENTOR: May I go back to your last question. I don't recall any affidavit or statement with Mr Mtolo, however, I recall having interactions with him in my house.

ADV MAHLAPE SELLO SC: Alright then I just want to put to you what Mr...

CHAIRPERSON: I am sorry, have you ever met with him anywhere other than in your house?

MS VYTJIE MENTOR: I have never met him anywhere other than in my house.

20 **CHAIRPERSON**: And have you met him only once?

MS VYTJIE MENTOR: I think I met him twice Chair.

CHAIRPERSON: And both occasions in your house?

MS VYTJIE MENTOR: Thank you.

ADV MAHLAPE SELLO SC: Okay, then when you speak of twice, can you explain to the Chair for what purpose you met him the first time and for what purpose you met him the second time, if you can recall?

MS VYTJIE MENTOR: If I can recall Chair, the first time when I met him I think it is the time when he brought the corrupted statement. The second time what comes to my memory is that I remember that he came to my house again after I had been at the IPID offices.

10 **ADV MAHLAPE SELLO SC**: Can you put a time, an estimation as to when you were at the IPID offices?

MS VYTJIE MENTOR: I don't recall Chair.

ADV MAHLAPE SELLO SC: Okay, you may proceed and what transpired in the second interaction?

20 **MS VYTJIE MENTOR**: I recall that it was because I had been at the IPID to lay charges to complain against and last night I was thinking about this what I said yesterday, to lay charges against Ntlemeza who I think was the Commissioner of Police and Pahlane, yesterday I might have given the position and the title and the time incorrectly and that came in the media and Mr Ntlemeza went public on the media claiming why they had not acted, they were struggling to get a hold of me, they had looked for me all over South Africa, that's what he said and then Mr Mtolo called me to say that would he come and see me again in my house and then I said to him, bring my original statement so I know that other than when he went on leave in June, on annual leave, my visit to the IPID was post that and after that visit he called me to say can we meet again and we met in my house. In fact I now recall Chair that at one stage he came with somebody that he said

was a cyber specialist and I asked him what does a cyber specialist have to do with my statement so there was a time he came alone and there was a time he came with somebody.

ADV MAHLAPE SELLO SC: Now you say he came with a cyber specialist, you referred to two instances, is it the first or the second time? Were you still on the second time he came after you reported to the IPID when he came with the cyber specialist, I just want us to be clear.

MS VYTJIE MENTOR: I don't think he came with the cyber specialist. Let me not comment because I do not recall.

10 **ADV MAHLAPE SELLO SC**: Alright, but then in both instances, did you ever sign and did he commission a statement signed by you?

MS VYTJIE MENTOR: Not that I can remember it.

ADV MAHLAPE SELLO SC: Now we were dealing with his paragraph 6 and in the same paragraph he continues at D3, page 50 Chair. His paragraph 6 where he is responding to your allegations set out in paragraph 123, in the second paragraph of 6 he states: "I further aver that the docket was forwarded to the Director of Public Prosecutions for decision on the aforesaid matter despite further attempts to meet on the 12th December, 2017 and January 2018 Ms Mentor failed to honour those appointments". You see that? Okay. What appointments in 12 December 2017 and January 2018 is Advocate Mtolo
20 referring to?

MS VYTJIE MENTOR: May I just read an internal as what I have been then?

CHAIRPERSON: But of course, of course.

MS VYTJIE MENTOR: Through you Chair, our date of appointment with Mr Mtolo was not the 12th December, it was the 14th December.

ADV MAHLAPE SELLO SC: Is that the date we are talking about?

MS VYTJIE MENTOR: It was the date that I was talking about.

ADV MAHLAPE SELLO SC: But if you recall, that is 2016. If you read that correctly you are referring to 12 December, 2017.

MS VYTJIE MENTOR: I beg your pardon about the date you referred to on 2016?

ADV MAHLAPE SELLO SC: I am saying the 14th December date we were talking about earlier and regard to the third statement at page 164 of D1 is 14 December 2016.

10 **MS VYTJIE MENTOR**: Okay I see that.

ADV MAHLAPE SELLO SC: So I am saying, in paragraph 6 he is referring to the 12th December, 2017 and January 2018 and then he says you failed to honour these appointments. So my question to you is to clarify what appointments these are and to inform the Chair.

MS VYTJIE MENTOR: I don't know.

ADV MAHLAPE SELLO SC: To your recollection did you have any appointments in or around that time with Advocate Mtolo?

20 **MS VYTJIE MENTOR**: When we could not meet on the 14th December, I suggested to Advocate Vogel I think I may have made a call to his landline because I have a friend that works for the MPA in Pretoria, I said get me the landline for Advocate Vogel, I said could we rather meet on the 15th, 16th, meaning shortly after the 14th December, 2016. Advocate Vogel told me that between the two of them they operate according to Court

sessions and that he was having another client to see on the 15th so and after the 15th he told me that he would be, because the Court session has come to an end, we would meet in January, 2017. So the appointment that I knew was once the Court session begins in January 2017, we would meet and I gave them time because when you are from leave and you are from session, there would be things on your desk that might be flowing from before you left so I gave them leeway in time and then at the end of January, beginning of February, when I have not heard from them, I called Mr Mtolo, I said, when are we setting the outstanding appointment and I said to him I am beginning to feel that you people are not committed to this and I asked him precisely, are you the Hawks and the
 10 MPA committed to see these things through? So our appointment was for January 2017, the appointment that I know of and it was supposed to be when the Court session begins and I followed up at the end of January, beginning of February to request the meeting again and that never took place.

ADV MAHLAPE SELLO SC: Thank you, I understand your answer. Now if I could just put to you then Advocate Mtolo's response to your allegations starting at page 49 of D3, that's his affidavit. As I indicated he takes issue with four paragraphs of your statement 120 – 123. Now at paragraph 3 from 49 dealing with 120 where you state that Advocate Mtolo along with another member of the Hawks whose name I do not recall, then came to my house with a typed version of the statement. His response is that he admits having
 20 met you at your residence by prior arrangement but however, denies being in the company of anybody else and states that he was alone at the time. Do you have a comment to that?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Please express it?

MS VYTJIE MENTOR: Mr Mtolo did come to my house, he did have a typed statement and that typed statement, why I call it typed statement there, is the corrupted version.

ADV MAHLAPE SELLO SC: If I may just clarify, his denial is that he wasn't in the company of anyone, he says he came alone on that day when he brought you the typed statement. Do you recall? Your paragraph 120 says he was in the company of another, he says he was alone. Are you able to recall whether he was alone or you stand by what you state in 120 that he was in the company of another?

MS VYTJIE MENTOR: Mr Mtolo was in my house with the company of somebody else that he referred to as a cyber specialist.

10 **ADV MAHLAPE SELLO SC**: Okay, so you stand by your averments in your own statement?

MS VYTJIE MENTOR: Yes ma'am.

ADV MAHLAPE SELLO SC: Thank you. He deals with your 121.

CHAIRPERSON: I am sorry, was that the second visit to your house by him or is that the first when he was with somebody?

MS VYTJIE MENTOR: Chair, I need to go to my transcript with the Public Protector, if you would allow me to.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO SC: I will try and locate that for you. That starts at D1, page 38.
20 Chair, while Ms Mentor locates her place in the file, I thought it would quickly be done. I am informed that there are certain questions her legal representatives would like me to put to her for clarification so I think the promise that I had made you of ten minutes seems to be falling apart very quickly. I don't know if the Chair would like to revisit.

CHAIRPERSON: Maybe we should take a short adjournment now.

ADV MAHLAPE SELLO SC: I am happy to Chair.

CHAIRPERSON: You could use the time to just check what you need to check Ms Mentor.

MS VYTJIE MENTOR: Thank you Chair.

CHAIRPERSON: It's now 11:35, we shall resume at 11:50.

ADV MAHLAPE SELLO SC: Thank you Chair.

CHAIRPERSON: We adjourn.

Session 2

CHAIRPERSON: My watch is correct it is 10 to 12.

ADV PAUL PRETORIUS SC: It is indeed Chair and I will hold fort until Ms Sello arrives.
She is here.

CHAIRPERSON: Okay. Alright.

ADV MAHLAPE SELLO SC: Apologies Chair, I was just ketting the list of questions
from her attorneys

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO SC: So as to move quickly through this and I apologise.

10 **CHAIRPERSON**: Okay. Alright. Thank you .

ADV MAHLAPE SELLO SC: To get back then to Adv Mtolo's statement before this
Commission. We have dealt with his response to your paragraph 120, where you say two
of them came. You indicated to the Chair that you maintain that there were two of them
and you stated as much before the Public Protector. Have you found the reference in the
Public and ...[intervened] :

CHAIRPERSON: I must say I remind Ms Mentor about making sure her response is
captured by the ...[intervened] :

ADV MAHLAPE SELLO SC: Thank you Chair.

MS VYTJIE MENTOR: Thank you Chair. Sorry.

20 **CHAIRPERSON**: Okay.

MS VYTJIE MENTOR: my apologies.

ADV MAHLAPE SELLO SC: Okay and you stated – If I may start again. That you stand by your averments in paragraph 120 of your statement that Mr Mtolo was in the company of another when he came what the so called corrupted statement.

MS VYTJIE MENTOR: I do.

ADV MAHLAPE SELLO SC: And you, before the break, you had indicated that you had state as much before Public Protector and it is in the transcript. I wanted to inquire whether you have had opportunity to consider the transcript and have you located where you mention that?

MS VYTJIE MENTOR: ...[no audible response]

10 **ADV MAHLAPE SELLO SC:** If you have not had time – you have not had time.

MS VYTJIE MENTOR: I went through – I found that when I did say to the Public Protector “they came” I spoke about them in plural.

ADV MAHLAPE SELLO SC: Okay

MS VYTJIE MENTOR: and that they were to return the corrected thing that I show them.

ADV MAHLAPE SELLO SC: Okay.

MS VYTJIE MENTOR: So, I have satisfied myself from the transcript of the Public Protector that I spoke about them in plural when I spoke to her.

ADV MAHLAPE SELLO SC: Okay. We have not found the - she has not found the place yet, Chair. But the transcript is before you. So, it shall be located if that is the place.

20 **CHAIRPERSON:** Well I thought what she meant was that the transcript reflected that she spoke about – she spoke in terms of the plural.

ADV MAHLAPE SELLO SC: Yes Chair.

CHAIRPERSON: Which suggest that Mr Mtolo was not alone.

ADV MAHLAPE SELLO SC: Indeed Chair.

CHAIRPERSON: Yes. Ja. Thank you.

ADV MAHLAPE SELLO SC: If we can move on then to what he says about your, 121. He deals with that at his paragraph 4 and he says that he did present a statement to you, for your perusal on confirmation and he did so under the instruction and request of his superior Brigadier Basie. It is typed Brigadies Basie. Do you see that?

MS VYTJIE MENTOR: Yes m'am.

ADV MAHLAPE SELLO SC: Okay. He states further that he had nothing to do with its
10 content, compilation or drafting and was acting purely on the instruction of his superiors. He admits the changes and insertions although it is typed the "charges and insessions" by Ms Mentor made in my presence but I deny making any other arrangement with her properly typed version." Do you have a comment to that?

MS VYTJIE MENTOR: I do m'am, through you Chair. I want to say that I also had a telephonic discussions with Brigadier Badie and to that extent I still have his – the phone number in my, in my phone.

ADV MAHLAPE SELLO SC: Sorry. You say Brigadier Badie he wrote Basie. Is it the base person or...

MS VYTJIE MENTOR: Well in my phone it is Brigadier Badie. I do not know if it's the
20 same person.

ADV MAHLAPE SELLO SC: Okay

MS VYTJIE MENTOR: But yes. Yes, he is right when says that I made changes. What he brought to me, as I said, is what I refer to as the corrupted statement.

ADV MAHLAPE SELLO SC: Okay.

MS VYTJIE MENTOR: And it is true that I showed him how corrupt it was in my own handwriting. Which is what he refers to as changes, charges, insertions.

ADV MAHLAPE SELLO SC: Yes. I guess the main issues arising from paragraph 4 is his denial that you and him made arrangements for him to return with a properly typed version.

MS VYTJIE MENTOR: I was getting to that ...[intervened]

10 **ADV MAHLAPE SELLO SC** Apologies m'am.

MS VYTJIE MENTOR: To that m'am. It was in June. He was going on annual leave and he said he will return when he came back from annual leave and the agreement was that my original statement he would bring with, because he did not bring it as requested and the typed – its typed version when it comes it will be correct in context – in content and not as corrupted as it stood when he gave it to me as when I corrected it. In the transcript of the Public Protector I also state that they were to return to me with a typed version statement and they did not return.

ADV MAHLAPE SELLO SC: Okay. While on that – can I then inquire whether Adv Mtolo or he and another, being the 'they', or anyone else ever returned to you with a typed
20 statement as corrected by you, for your signature?

MS VYTJIE MENTOR: After the first meeting with them ...[intervened]

ADV MAHLAPE SELLO SC: At any point since they left your house on that day. Did anyone ever return with a typed statement incorporating the changes you had made?

MS VYTJIE MENTOR: No.

ADV MAHLAPE SELLO SC: Well that is how he deals with your paragraph 121. We then moved to 122 and you recall at 122 you had indicated to the Chair that you would like to make some changes or corrections to that and you had suggested to delete the name of Mr Mtolo.

MS VYTJIE MENTOR: ...[no audible answer]

ADV MAHLAPE SELLO SC: Just for the record you had indicated that you would return to the Chair and again yesterday you were not ready, yet to do so. To state exactly who the “three” you laid charges against and when Adv Mtolo provided or signed this statement you had not made this changes. So, your 122 still refers to him. You understand.

MS VYTJIE MENTOR: ...[no audible answer]

ADV MAHLAPE SELLO SC: So, in that regard he says he has no knowledge of the allegations of you reporting him IPD and he cannot respond thereto. That is all he says. Okay. Lastly he then deals with paragraph 123. Which is actually where we started with his statement. Okay.

MS VYTJIE MENTOR: Chair, may I make a submission to the Chair?

CHAIRPERSON: Ja, you can. What you want to say.

MS VYTJIE MENTOR: A request.

20 **CHAIRPERSON:** Mmh.

ADV MAHLAPE SELLO SC: Absolutely m'am.

MS VYTJIE MENTOR: Thank you. Chair I request that the Commission should help me get the statement I made at IPD offices.

ADV MAHLAPE SELLO SC: Yes, m'am.

MS VYTJIE MENTOR: I want to submit that there was difficulty and a refusal when I arrived at the IPD office to take my statement. I had to battle. I had to call Major General Vieri to get from him the contact number of Mr McBride, head of IPD, and to tell him that people are – I am at the IPD to report they are refusing to take my statement and Mr McBride had to intervene and had to instruct that they take my statement. So, subsequently on the same day the statement was taken and I would like to request the
10 Commission to get me that statement. It will assist me in dealing with the issue of the third person.

CHAIRPERSON: Mmh.

ADV MAHLAPE SELLO SC: Indeed, Chair. ...[indistinct] to do that.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO SC: I can confirm. Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO SC: If we go back to your statement then=, Ms Mentor we are still under the heading of your disclosures at that – page 35 to page 36 you deal with your disclosures to the Public Protector. I mention for the record that the disclosures are
20 contained in the transcript which appears from page 38 of B1. That is your transcript.

CHAIRPERSON: Thank you.

MS VYTJIE MENTOR: ...[no audible response]

ADV MAHLAPE SELLO SC: What would you like to say about this, Chapter and your disclosures to the PP.

MS VYTJIE MENTOR: Which chapter, m'am?

ADV MAHLAPE SELLO SC: At page 35.

MS VYTJIE MENTOR: Yes.

ADV MAHLAPE SELLO SC: Heading the Public Protector – remember it is under the main heading at 29 “my disclosure of the offer made to met by Ajay Gupta. You dealt with the first disclosures. You dealt with disclosure to the media and social media –
10 starting at 30. You then dealt and we have just completed your disclosures to the Hawks starting at page 33 and the last is to the PP at – starting page 35.

MS VYTJIE MENTOR: Yes m'am. I am at 35.

ADV MAHLAPE SELLO SC: Now, is there anything that you would like to highlight for the Chair as regards your disclosures to the Public Protector. As I said they are on record. It is in the transcript. Is there anything in particular you would like to draw the Chairperson's attention to?

MS VYTJIE MENTOR: I would like to draw the Chairperson to the fact that when I – right at the beginning of the interview... What I had said previously that I referred to 'they' – when I referred to when they to come to my house to give me the corrupted
20 version.

CHAIRPERSON: Are you talking about Mr Mtolo and somebody else?

MS VYTJIE MENTOR: Yes Chair that Mr Mtolo referred to a cyber specialist.

ADV MAHLAPE SELLO SC: Yes.

MS VYTJIE MENTOR: I also want to bring to the attention of the Chair that to the Public Protector in that interview and in that attached transcript I also said that on the first encounter when I was – was that typed was brought to me. I was requested to consider, persuaded to remove the name of the president where I say at the part where it said there is a corrupt relationship between the president, his son and so on that – I .. it it that I submitted to the Public Protector also the – it is Mr Mtolo – in my meeting with Mr Mtolo where I was encouraged to do that.

CHAIRPERSON: O.

10 **ADV MAHLAPE SELLO SC:** Thank you, Ms Mentor. Chair through you, to bring to your attention the questions that her legal representatives had wanted me to clarify with her – they related to ... apologies Chair. Ms Mentor wants to speak.

CHAIRPERSON: O. Okay, i am sorry. Yes Ms Mentor?

MS VYTJIE MENTOR: Chair, when I was – before tea break I was trying to clarify myself and I would like to bring it to your attention that I maintain that when Mr Mtolo first came to my house, the first visit. He was in the company of somebody else. That I asked him who that person was. He said he was a cyber specialist and it is in that meeting where the typed statement he brought had errors. I corrected by pen and it is in that meeting, where that person was also present, where I was encouraged to remove the
20 name of the president there. I think it is paragraph 61, if I am not wrong and that it is, again – it was at the time when he was going on annual leave and it is at the time when he was with that person when he would return after annual leave and I would submit that he never returned. He only returned after I had gone to the IPD and when he returned after the IPD he came alone and that thereafter we never met. We arranged to meet –

me and himself and Adv Vogel. The meeting never materialise. We postponed it to January 2017. It never materialised and I never ever met him again.

CHAIRPERSON: Okay. Thank you. Thank you so you met Mr Mtolo on two occasions on both occasions it was in your house. On the first occasion he was in the company of somebody else ...

MS VYTJIE MENTOR: Yes. Chair.

CHAIRPERSON: That he said was a cyber specialist.

MS VYTJIE MENTOR: Yes Chair.

CHAIRPERSON: On the second occasion he was alone.

10 **MS VYTJIE MENTOR**: Yes Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO SC: Thank you Chair. That takes care of the clarification question I was suppose to put to her. Ms Mentor provided the clarification before I posed the questions. Chair, I am advised that Ms Mentor spend the tea break working through the PP's transcript to find the reference to the 'they' that she spoke about when the 'corrupted statement' quote unquote was brought to her. When she began her testimony before you – she indicated that there were some corrections she wanted to effect, to her statement, and she could not, immediately deal with all of them and I was reminded that her statement was accepted and she confirmed. She confirmed it subject to the minor
20 corrections she would like made. She had hoped to use the tea break to go through her statement to make sure she has affected all corrections and she was not able to do so. So, if we could permit her upon her return when she then deals with the versions of the former president and Mr Ajay Gupta should they be filed by the deadline which is Friday,

that she shall deal with the corrections at that juncture and to remind that the correction at 122, her report to IPD is still subject to receipt of the statement that she had made to IPD

CHAIRPERSON: Okay. That is

ADV MAHLAPE SELLO SC: Thank you Chair.

CHAIRPERSON: That is an order. Yes.

ADV MAHLAPE SELLO SC: Thank you. On that basis, Ms Mentor that would bring me to the end of your statement and I would like to enquire from you – whether we have covered everything that you wanted to inform the Chair of, in this session, and if we have omitted anything, please point it out.

10 **MS VYTJIE MENTOR**: I think we have not omitted anything and if I may address the Chair. My family expresses gratefulness to the Commission and to the Chair in particular and the staff of the Commission for making me safe yesterday and for making it possible that I could take the stand today in a composed manner. I thank you Chair.

CHAIRPERSON: Thank you very much, Ms Mentor and we thank you too for coming forward to tell us – tell the Commission what you know that is connected with the investigation of the Commission. We have encouraged member of the public who have knowledge and information of matters that fall within the terms of reference of the Commission and we continue to encourage them to come forward, because there must be – there may well be others who know something that is relevant to our investigation
20 and some of them maybe in the legislatures in the provinces. The national parliament. Some may well be in the cabinet. We encourage all of them if they have knowledge of anything that falls within our terms of reference to come forward and assist the Commission and therefore assist the nation. So we thank you very much for coming

forward. You will still be needed at some stage, but the Commission will be in touch with you. Thank you very much. You are excused for now.

MS VYTJIE MENTOR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO SC: Chair I understand that the next witness and the team area ready. May I perhaps request - Can I request a five minutes adjournment to possibly allow for a change ...[indistinct]?

CHAIRPERSON: Okay, that is fine. Then we will adjourn for five minutes which will take us to quarter past 12.

10 **ADV MAHLAPE SELLO SC:** Thank you Chair.

COURT CLERK: All rise.

HEARING ADJOURNS

[End of recording]

Session 3

CHAIRPERSON: Mr Maleka are you ready?

ADV VINCENT MALEKA SC: Thank you. Chairperson. Each time I stand before I tremble.

CHAIRPERSON: I don't see any trembling in your legs.

ADV VINCENT MALEKA SC: Chairperson the next witness for the Commission is Mr Maseko. May I ask for your permission to invite your Registrar to swear him in?

CHAIRPERSON: Yes. Good morning Mr Maseko?

MR THEMBA MASEKO: Good morning Chairperson.

10 **CHAIRPERSON:** Thank you, you will be ... an oath will be administered to you just now or if you don't to an oath or affirmation will do, the Registrar will take care of that.

COURT CLERK: Please state your full names for the record?

MR THEMBA MASEKO: Themba Willie James Maseko.

COURT CLERK: Do you have any objection of taking the prescribed oath?

MR THEMBA MASEKO: I do not.

COURT CLERK: Do you consider the oath to be binding on your conscience?

MR THEMBA MASEKO: Yes I do.

COURT CLERK: Please raise your right hand? Do you swear that the evidence you shall give today shall be the truth, the whole truth and nothing but the truth?

20 **MR THEMBA MASEKO:** I do swear.

COURT CLERK: So help you God?

MR THEMBA MASEKO: Help me God.

COURT CLERK: Thank you.

MR THEMBA MASEKO: Thank you.

CHAIRPERSON: Thank you. Mr Maleka, you may proceed.

ADV VINCENT MALEKA SC: Thank you Chair. Chair before we start with the evidence of Mr Maseko, may I identify the dataset that will be relevant in the cause of his testimony.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: The first, Chair, is exhibit A1 which is now before you and
10 has been kindly placed on your desk by Ms Norman when she described and outlined the documents that we brought to your attention. It is the Public Protector's report which has already been admitted in the bundle. I hope that you have a copy, Chair?

CHAIRPERSON: I've got a copy but did you mark it as something?

ADV VINCENT MALEKA SC: It is now admitted in evidence as exhibit A1.

CHAIRPERSON: A1?

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: Okay, alright.

ADV VINCENT MALEKA SC: I would not ask you to go into it at this stage, if not, may I ask you to please mark it exhibit A1.

20 **CHAIRPERSON:** Thank you. That would be exhibit A1.

ADV VINCENT MALEKA SC: The next, Chair, is what we have identified as the Maseko evidence bundle. You do not have it. We have prepared a copy for you. Can I beg you permission to hand it up?

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Now, just mark it Chair. Chair I'm told by those who are in good office of keeping the numbers that we are at the stage where we can request you to mark it and admit it as exhibit E1.

CHAIRPERSON: Exhibit E1.

ADV VINCENT MALEKA SC: Yes Chair. We have placed a copy thereof before Mr
10 Maseko, and he has had an opportunity to consider the contents of exhibit E1.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: So to remind Mr Maseko each time I ask you to consider, reflect upon and deal with the contents with the bundle of document I will identify it as exhibit E1 to maintain the consistency of a clean public record. If I do forget, please forgive but you can correct me.

MR THEMBA MASEKO: Thank you sir,

ADV VINCENT MALEKA SC: Chair the next dataset that is something that we don't place before you but simply to record that it is a document comprising amongst others. Notices given to and served on persons and or entities implicated by Mr Maseko's
20 evidence. They know themselves I'm not going to repeat them.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: I know that some of them are represented here today. I raise this issue with you now because at this stage as Evidence Leaders we do not have a counter vailing or a competing version that disputes that of Mr Maseko. So that there is nothing in fairness that we can put to him in order to comment as a competing version for you to arrive at the truth. Hopefully by Friday, we shall have, hopefully I emphasised, a competing version in which event it may become necessary to recall Mr Maseko in the event we complete his evidence before the version arrives.

CHAIRPERSON: Ja.

ADV VINCENT MALEKA SC: Chair against the background of that dataset, can I
10 identify where Mr Maseko's evidence fits in, in the context of the terms of reference. His evidence fits in, in the context of paragraph 1.1 of the Terms of Reference and that is a preamble which requires you to investigate, make findings on, report and make recommendation on allegations of State Capture, corruption, of fraud insofar as they relate to office [Indistinct] in Public Institution. The evidence of Mr Maseko will deal with that part the allegations.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: That evidence also fit in by way of an introductory portion to paragraph 1.6 of the Terms of Reference which implicates irregularities, undue enrichment or undue corruption or influence in our mining contracts, mining licences,
20 Government Advertising in the Gupta Centric Media Businesses and so there will be some evidence that implicates that part of the Terms of Reference. His evidence tells a story and it is a story that relates to a public institution called Government Communication and Information Systems. I will ask for your permission in advance to refer to that institution as GCIS because that acronym flows easily from my lips and it is the story of

the GCIS that we will tell in three parts. This first is that through the evidence of Mr Maseko and the second part will be the story of GCIS, which will be told by the current acting Director General, Ms Phumla Williams, who will layout before you allegations relating to those Terms of Reference of her experience after Mr Maseko left GCIS. The third part of that story will relate to the numbers game, as we call it. It will be the amount of payments that's the Government, either directly through the GCIS or indirectly through other institutions, that have paid to the media entities owned by the Gupta based media groups. To that extend we will present that evidence through a representative of Treasury. And Chair, we consider that evidence to be neutral for it does not implicate
 10 anyone. It simply presents before you the amount of payment made. And to that extend we have not given any notice to any person because it is evidence of numbers that is neutral in it's nature. So Chair if you permit me I would then begin to lead the evidence of Mr Maseko. Let me mention that he is legally represented. In Chambers we introduced the set of lawyers that represent him. But in the interest of public accountability may I invite Mr Baum to introduce his team and tell you where he fits in.

CHAIRPERSON: Ja. That's in order.

MR BAUM: Thank you Chairperson. Chairperson my name is SR Baum. To my right is Advocate Janelle Nkloko. We appeared together for Mr Maseko. To my left is our instructing Attorney Mr Tyron Maseko.

20 **CHAIRPERSON:** Thank you very much. Thank you.

ADV VINCENT MALEKA SC: Mr Maseko I have identified exhibits E1 for you. I hope that you have it.

MR THEMBA MASEKO: I have it sir. Thank you.

ADV VINCENT MALEKA SC: I would like to explore a matter of sequence in relation to some documents contained in exhibit E1. You will see that the first page which is titled Maseko – Evidence Bundle Index, comprises a description of numbers sequentially set out on the extreme left hand column. The next column that follow in the middle describes the contents of the documents contained in that bundle. You see that?

MR THEMBA MASEKO: Yes I do.

ADV VINCENT MALEKA SC: And the right hand column describes the pages where each of the documents would be found. Do you see that?

MR THEMBA MASEKO: I do.

10 **ADV VINCENT MALEKA SC:** And so for instance if you follow that index page, Item one will be a Curriculum Vitae which I take is your Curriculum Vitae. Correct?

MR THEMBA MASEKO: Yes it is correct.

ADV VINCENT MALEKA SC: And you will see that the index page identifies where we will get it. Page 1 - 5. Do you see that?

MR THEMBA MASEKO: I see that Chairperson.

ADV VINCENT MALEKA SC: And so that's the sequence which will follow. I'll come back to your CV. I'd like to identify some documents and ask you to comments about the sequence in exhibit E1. Can I start off with the document which is at page 65, going to page 74? Do you have it?

20 **MR THEMBA MASEKO:** I've got it Chairperson.

ADV VINCENT MALEKA SC: You have read that document before you took the witness stands. What is the document?

MR THEMBA MASEKO: This is a document that I prepared following a statement that was made by the Secretary General of the African National Congress, inviting members of the African National Congress and members of the public who had information about the whole State Capture allegations that were in the media. He then invited members of the public to make submissions to the African National Congress because following a meeting of the National Executive Committee, they had set up a structure, a Committee, which are supposed to investigate State Capture, and he was inviting people to come and give evidence. So that document was prepared as part of my submission to that process.

- 10 **ADV VINCENT MALEKA SC:** Can I, for the benefit of the Chairperson and of course for my own benefit to, ask you to identify the particular person at that point in time who held the office of the Secretary General of the ANC?

MR THEMBA MASEKO: Chairperson, the person who held that position in the ANC was Mr Gwede Mantashe.

ADV VINCENT MALEKA SC: I have looked at the document and you to know that did, especially page 74. Can I invite you to go to page 74?

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: Are you there?

MR THEMBA MASEKO: Yes I am there.

- 20 **ADV VINCENT MALEKA SC:** My copy does not have a date, although it has a column for date entry. Does your copy of a date?

MR THEMBA MASEKO: The copy does not have a date as well.

ADV VINCENT MALEKA SC: I see that there is a space for your name and signature. Mine does not bare any signature Indistinct] to be yours or which in fact is yours? Does yours have a signature?

MR THEMBA MASEKO: My copy does not have a signature as well, Chairperson.

ADV VINCENT MALEKA SC: The format of the document that you submitted to Mr Mantashe did it have a signature and or a date?

MR THEMBA MASEKO: The copy that I handed over to the Secretary General was signed and did have a date.

ADV VINCENT MALEKA SC: Can you recall off-hand, more or less, when you would
10 have signed a copy that you sent to Mr Mantashe?

MR THEMBA MASEKO: Chairperson, unfortunately I cannot recall the exact date, but I know that it was in the period between the months of June and July 2016.

ADV VINCENT MALEKA SC: Right. We will work with that period.

CHAIRPERSON: I'm sorry Mr Maleka. I think I understand that if you keep your mic on, it won't disturb anything. If it does disturb somebody will say. So because otherwise you might forget to put it on.

ADV VINCENT MALEKA SC: My apologies Chair. Thank you. Alright you are comfortable that we will work with the period that you have just identified?

MR THEMBA MASEKO: Yes, I'm comfortable.

ADV VINCENT MALEKA SC: The next document begins at page 75. Can I invite you to
20 go to page 75?

MR THEMBA MASEKO: I've got it Chairperson.

ADV VINCENT MALEKA SC: Again, I take it that you've read the document?

MR THEMBA MASEKO: Yes I did.

ADV VINCENT MALEKA SC: Can you identify it to the Chairperson?

MR THEMBA MASEKO: Chairperson this was a statement which was prepared by a group of former Director Generals, that is Heads of Departments, who are no longer in service of the Public Service, who had come together to discuss all allegations about State Capture and their concerns about what was happening in the country at the time. So this was a media statement that was issued following a document that had been prepared and submitted to Government, raising specific concerns about State Capture.

10 **ADV VINCENT MALEKA SC:** You will see that at page 79, the document is referencing Annexure A. Do you see that?

MR THEMBA MASEKO: I see that sir.

ADV VINCENT MALEKA SC: And below that reference there is the following description and I quote "*A voice of reason, save the sole of the Public Service from State Capture.*" Do you recall who put that inscription in the document? Who scripted in those words in this document?

MR THEMBA MASEKO: If I recall Chairperson, the words were inserted by us as former DGs, to try and capture what was the driving force behind this whole initiative.

ADV VINCENT MALEKA SC: Why did you ... Let me first clear the question of dates?
20 I'm sorry I'm going to jump up and about but please keep page 79 next to you and move back to page 75.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: You'll see that the title of the document is embargoed for publication on 15 May 2016.

MR THEMBA MASEKO: I see that Chairperson.

ADV VINCENT MALEKA SC: Why was the document embargoed for publication?

MR THEMBA MASEKO: It was embargoed because the original memorandum was prepared by the Directors General. We then sent a copy to the media to make sure that the statement was not published before we've had some conversation with the Ministers concerned that we had written to.

CHAIRPERSON: I'm sorry Mr Maleka. Or was the idea that it was to be, it was
10 embargoed until 15, Sunday 15 May or was it embargoed from 16 May or 15 May, I'm sorry.

MR THEMBA MASEKO: It was given to media houses most probably around the 13th and 14th of May, for publication on the 15th of May.

CHAIRPERSON: Oh the embargo would be lifted on the 15th.

MR THEMBA MASEKO: Yes. It was to be lifted on the 15th.

CHAIRPERSON: So it was meant to be embargoed before the 15th.

MR THEMBA MASEKO: Yes.

CHAIRPERSON: Okay. Alright. Thank you.

ADV VINCENT MALEKA SC: So the media house would not on your permission be
20 entitled to publish it in advance of the 15th of May?

MR THEMBA MASEKO: The general rule, Chairperson, in the media is that media houses tend to respect a statement that's written embargoed. They'll have access to it and as far as I am aware media houses have behaved in this regard, yes.

ADV VINCENT MALEKA SC: Thank you for that enactment. I will embargo what I send to them in advance to. Yeah. But on a serious note. If you go back to page 79, there is reference to Annexure A. What is the document, if ever it is a document?

MR THEMBA MASEKO: The Annexure A would have been the document that is, was attached to the media statement which was a Memorandum, which was signed by the Directors General who were attached their signatures to the statement that we're
10 making.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: So that Memorandum is marked page 80.

ADV VINCENT MALEKA SC: Page 80?

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: Alright. You will see that page 80 is dated the 22 of April 2016.

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: And that is, and we must read it as Annexure A, which is referred to you on page 79.

20 **MR THEMBA MASEKO:** That's correct yes.

ADV VINCENT MALEKA SC: I will get back to the addressees of the document but let me ask you to go to page 81. And you will see that in the concluding part it identifies persons who are supposed to be signatories to that Memorandum.

MR THEMBA MASEKO: That's correct, Chairperson.

ADV VINCENT MALEKA SC: I have looked at these, these signatories. They are high ranking members of a society.

MR THEMBA MASEKO: That is correct, Chairperson.

ADV VINCENT MALEKA SC: They include amongst others Rev Frank Chikane.

MR THEMBA MASEKO: Yes sir.

10 **ADV VINCENT MALEKA SC:** We know his background. Is there anything about his background that you want to share with the Chairperson so that he has it on record and when he makes determination he should know who he is.

MR THEMBA MASEKO: Chairperson Ref Frank Chikane was the Director General in the President's Office, during President Mbeki's time. Is a respected member of society? Is somebody held in high regard? He was a leader of the United Democratic Front during the struggle days and it's somebody who was also a member of the National Executive Committee of the African National Congress at that time.

ADV VINCENT MALEKA SC: I'll mention the names quite quickly and if there is any attribute of the names that you wish to highlight so that it's a matter of record please do
20 that. There is the name of Mr Bergelda, who was he?

MR THEMBA MASEKO: Mr Bergelda was former DG of the Department of Home Affairs. He had also worked in the Intelligent Services in Government. He was somebody

that, he is somebody that I hold in high regards. He is currently working for the Makumbuwe Institute of Minstra.

ADV VINCENT MALEKA SC: There is a Mr [Indistinct name] I'll skip that and there is Mr Tosi Gwanya, who was he?

MR THEMBA MASEKO: He was also a Director General of Department of Land Office, I believe.

ADV VINCENT MALEKA SC: Then there is Mr Roger Jardine who was he?

MR THEMBA MASEKO: Also a former Director General in the Department of Trade and Industry.

10 **ADV VINCENT MALEKA SC:** And there is your name and we'll come back to your background in a moment. And I am just going to deal two last names. The next is the name that I picked up because I know it quite well, is that of Mr Vusi Picolli.

MR THEMBA MASEKO: Yes Chairperson Vusi Picolli was the former National Director of Public Prosecutions.

ADV VINCENT MALEKA SC: And then there is the name of Yoliswa Sibeko. Do you see that?

MR THEMBA MASEKO: I see that.

ADV VINCENT MALEKA SC: What was she doing at the time?

20 **MR THEMBA MASEKO:** Oh, I'll have to try and remember that but at this point in time I think her role escapes me but she was also a former Director General in one of the Government Departments.

ADV VINCENT MALEKA SC: Alright let's replace her name with that of Ms Lindell Shope Mafone. Do you see that?

MR THEMBA MASEKO: She was a former Director General in the Department of Communications.

ADV VINCENT MALEKA SC: Yes. Can I ask you go back to page 80? We now know what the document is. It was addressed to a number of Ministers and the Head and Deputy of the National Executive of our country. The first addressee it's the Minister of Finance. Minister Pravin Gordhan, MP. Do you see that?

MR THEMBA MASEKO: I see that.

10 **ADV VINCENT MALEKA SC:** Do you know whether he or his office received this memorandum?

MR THEMBA MASEKO: Chairperson I can confirm that his office, Minister Gordhan's office did receive the Memorandum and in fact did communicate to the group that he was willing at some stage to have a meeting with the group.

ADV VINCENT MALEKA SC: Next is the Minister of Public Service and Administration, Minister Ngoako Ramatlodi MP.

MR THEMBA MASEKO: I see that Chairperson, he also acknowledged receipt of the Memorandum and in fact in his case Minister Ramatlodi's case, his advisor, I think it was a certain Mr Morphe, did make contact with us and said his Minister was going to get
20 back to us with a date for a meeting.

ADV VINCENT MALEKA SC: And then there is the President of the Republic of South Africa. You see that?

MR THEMBA MASEKO: I see that.

ADV VINCENT MALEKA SC: Do you know who the President as was at the date of this Memorandum?

MR THEMBA MASEKO: At the date of this Memorandum the President of Republic of South Africa was Mr Jacob Zuma.

ADV VINCENT MALEKA SC: Do you know whether he received this Memorandum?

MR THEMBA MASEKO: His office did confirm receipt of the Memorandum.

ADV VINCENT MALEKA SC: Then lastly the Deputy President of the Republic of South Africa? Who occupied that office in that point in time? I mean 22nd April 2016?

MR THEMBA MASEKO: It was Mr Kgalema Motlanthe and his office did confirm
10 receipt of the letter.

ADV VINCENT MALEKA SC: Yes. There's some aspects of this Memorandum that I'd like to deal with, if you commit me Chair?

CHAIRPERSON: I'm sorry. Did you say the Deputy President of South Africa was Mr Motlanthe?

MR THEMBA MASEKO: Motlanthe, yes Chairperson.

CHAIRPERSON: In 2016?

MR THEMBA MASEKO: I believe it was, yes. Could be wrong.

CHAIRPERSON: Didn't we have an election in 2014 and there was a new Deputy President?

20 **ADV VINCENT MALEKA SC:** Can you reflect on that?

CHAIRPERSON: Do you want to reflect.

MR THEMBA MASEKO: Let me reflect on the dates again Chairperson. I thought it was.

CHAIRPERSON: There was a General Election in South Africa in 2014.

MR THEMBA MASEKO: Yes. Can I reflect, I think my memory is escaping me a little bit?

CHAIRPERSON: Okay. We can come back to it in due course.

ADV VINCENT MALEKA SC: There's the first instalment you owe to the Chairperson. Mark it instalment number one.

ADV VINCENT MALEKA SC: Chair with your permission can I converse aspects of this
10 Memorandum that I believe to be important? Mr Maseko, look at the first paragraph of that Memorandum.

MR THEMBA MASEKO: Yeah.

ADV VINCENT MALEKA SC: Can you read into the record what is said there?

CHAIRPERSON: I'm sorry Mr Maleka. This Memorandum doesn't have a Heading. In page 79 it sort of refer to Annexure A. It might be convenient that we give it some name. Whether we call it Memorandum or Annexure A so that it might be easier to identify it?

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Shall we just say Annexure A, maybe or what do you suggest?

20 **ADV VINCENT MALEKA SC:** Chair can we refer to it as the document describe it as Annexure A.

CHAIRPERSON: You want us to write on that document to describe it as Annexure A or you want us to just say Annexure A?

ADV VINCENT MALEKA SC: Yes. Chair I would prefer that it should be Annexure A to the Press Statement.

CHAIRPERSON: To the Press Statement, starting at page 75?

ADV VINCENT MALEKA SC: Indeed.

CHAIRPERSON: So we'll say Annexure A to, just say Press Statement because it comes immediately after the Press Statement and is referred to as Annexure A. So that should be enough. So we'll refer to it as Annexure A to the Press Statement.

10 **ADV VINCENT MALEKA SC:** Yes Chair.

CHAIRPERSON: Thank you. You got that Mr Maseko?

MR THEMBA MASEKO: I got it Chairperson, thank you.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Chair I take it that I have permission to converse. There is some of the contents of this Annexure A which I consider to be relevant.

CHAIRPERSON: Yeah.

ADV VINCENT MALEKA SC: Thank you.

CHAIRPERSON: Thank you.

20 **ADV VINCENT MALEKA SC:** Mr Maseko I invite you to start by reading the first paragraph of Annexure A.

MR THEMBA MASEKO: Annexure A, paragraph 1 read as follows Chairperson.

“We, the undersigned, are former Directors General in the Post Apartheid South African Government with a prior history in the liberation struggle where we served as cadets of uMkhonto weSizwe, Officials of the African National Congress, Azanian People’s Organisation, the Pan Africanist Congress and various organisations of the Mass Democratic Movement.”

ADV VINCENT MALEKA SC: Can I stop you there and ask you to clarify the following for me? Why was the signatory to this document confined to the former Directors General of the Public Service of the Post Apartheid era?

10 **MR THEMBA MASEKO:** Chairperson, we were a generation of activists who had participated in the struggle for the liberation of this country. We went into Government to serve the people. We shared a common commitment to democracy, ethical governance transformation. We also shared a very close comradeship among ourselves. We were in contact discussing our concerns about what was happening in Government at the time. There was never an intention to exclude anybody but it was because we knew each other very well. We shared a common vision and that is why we decided to come together. There was a time when the number of DGs who signed the document could have increased to include other individuals who may not have been part of those organisations but in the interest of time we decided to proceed with those who had already indicated

20 their willingness to sign the document.

ADV VINCENT MALEKA SC: I will skip the paragraph that follow that ask you to confirm whether or not that is part of the Memorandum. Do you confirm that?

MR THEMBA MASEKO: Please repeat the question?

ADV VINCENT MALEKA SC: I don't want you to read it. Look at paragraph, the paragraph that follows...

MR THEMBA MASEKO: Oh, the next paragraph?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: Yeah.

ADV VINCENT MALEKA SC: And one thereafter which starts with in persuade and I, the only comment I'd like you to make is to invite you that to confirm that, that is part and parcel of what you communicated.

MR THEMBA MASEKO: I do confirm that Chairperson.

10 **ADV VINCENT MALEKA SC:** And the next one that I'd like you to read into the record is the one that start with "We submit" Do you see that?

MR THEMBA MASEKO: I see that Chairperson. The paragraph reads as follows:

"We submit this Memorandum to express our collective concern addressing revelations of State Capture by the Gupta family. Their apparent influence over political and administrative appointments and their involvement in the irregular facilitation securing and issuing of Government tenders and contracts. We also express our concern with the effect of the recent Constitutional Court Judgement in the Nkandla matter on the legitimacy of the State and it's ability to focus resources and efforts on delivering services to our people, growing the economy and achieving our transformatory and development of those."

20

ADV VINCENT MALEKA SC: Mr Maseko that's a mouthful.

MR THEMBA MASEKO: I believe it is. Yes.

ADV VINCENT MALEKA SC: Can I invite you just in the general high level to indicate to Chairperson what where the matters of collective concern at that point in time, relating to the Gupta family, that caused you to submit this Memorandum to those members of the National Executive you identified. At a very high level of generality. We will come back to specific matters relating to you concerning the Gupta family.

MR THEMBA MASEKO: Chairperson as I recall, at the time there were a lot of media reports about incidents of corruption, incidents of the involvement of the Gupta family in trying to unduly influence procurement decisions in Government. Influence appointments in National Departments, State Owned Enterprises and some of the individuals, without referring to any specific names, some of the individuals that agreed to sign this Memorandum were also able to share with the group their own experiences with the Gupta family. I might add, Chairperson, that at that particular point in time there were also very clear indications that in fact a number of Senior Government Officials who are still in the service, were complaining to some of the people who signed this Memorandum about the extent to which procurement processes in Government were being undermined and that they found themselves in a very difficult position because when procurement processes are not being followed, they as accounting officers could be held accountable for that and yet they were experiencing undue pressure, even from their political principals. However, many of those individuals were reluctant to attach their names to this document for fear of losing their jobs. For fear of reprisals. So that's basically what that paragraph is trying to capture.

ADV VINCENT MALEKA SC: Yes. Thank you Chair. Mr Maseko I'm going to move then to the next paragraph. I take it that you confirm that it's part and parcel of the Memorandum that find its way to the Ministers and the President and his Deputy. But off interest in that paragraph you refer to the initiative undertaken by the ANC to conduct an internal inquiry. Do you see that?

MR THEMBA MASEKO: I see that Chairperson.

ADV VINCENT MALEKA SC: Can I ask you to elaborate a bit about that internal inquiry, in so far as you recall it.

MR THEMBA MASEKO: The discussion among Director Generals is that firstly we
10 welcomed the fact that there were discussions within the African National Congress about this matter of State Capture. We also believe that yes, there were adequate measures that could enable decision makers in Government, to actually address some of the challenges that Government was facing at the time and that those needed to be attended to. For example if a Minister instructs a Director General to give a tender to a particular company that is illegal, unlawful and contrary to, for example, the Public Financial Management Act. So those things are things that the group felt could be addressed using existing Government processes and procedures. We were also mindful of the fact that the ANC process was essentially an ANC process, meaning that members of the African National Congress were welcome to participate. But if there was an employee of
20 the State who was not a member of the African National Congress, there was no obligation for them to participate in an ANC so to speak, internal process. So our view is that if we wanted to get to the bottom of this State Capture challenge, we needed to go beyond just a political party internal process. It needed to be broader.

ADV VINCENT MALEKA SC: Did you yourself participate in that ANC inquiry?

MR THEMBA MASEKO: When the, Chairperson, when the Secretary General issued a statement following a meeting of the National Executive Committee of the African National Congress, inviting, I believe he said members of the ANC and members of the public to come and make representations if they've had experiences with the State Capture project. So when I saw that invitation I decided to participate in the process, and I know that people that I was associated with at the time, friends and comrades, thought I was being extremely naïve to think that that process is going to yield anything. But personally I felt that the matter was so serious that it needed to be dealt with. First politically but also through your normal State Security Agencies, Prosecutors, etcetera, etcetera, etcetera. So I wanted to give that process a chance. Short answer to your question sir, yes I did participate.

ADV VINCENT MALEKA SC: You did and how?

MR THEMBA MASEKO: I made contact with the Secretary General of the ANC, Mr Gwede Mantashe, and informed him that I was willing to be a participant in the process. He then invited me to a meeting to discuss what I wanted to share with him, and the meeting did take place in his offices in Luthuli House. At the end of that meeting he asked me if I was willing to put all the things that I told him in writing. And I responded in the affirmative and that led to me in preparing a statement which I then hand delivered to him at a subsequent meeting I had with him.

20 **ADV VINCENT MALEKA SC:** And is that the statement we find from page 65 or is that a different statement?

MR THEMBA MASEKO: Chairperson, that's correct. That's the statement that I submitted to the Secretary General.

ADV VINCENT MALEKA SC: There's something that strikes me about the date sequence with reference to that statement. Earlier on you indicated that although you can't pin down a date of that statement because you don't have the original, you said that it must have been somewhere between June and July 2016?

MR THEMBA MASEKO: Chairperson, I need to explain the date issue. I've spent the past couple of nights trying to go through my diary to look for the specific dates for the meeting. I could not find it and I believe the reason why it does not appear in any of my diaries was because of the climate of the time I consider that meeting to be private confidential, almost secret meeting. So that's why I cannot confirm the exact date.

10 **ADV VINCENT MALEKA SC:** But as a matter of fairness and logic and fairness to you by the way, that it is if by the 22nd of April 2016, you had already noted the internal ANC processes and you have now told the Chairperson that you had, by that stage, already participated by sending your written submission beginning at 65. It most logically follow that your Memorandum must precede Annexure A to the Press Statement. Can I invite you to comment on that proposition I put to you?

MR THEMBA MASEKO: Chairperson, as far as I can remember, I can just check the dates, I think by the time we met as Directors General; I had already prepared that statement to the Secretary General.

20 **ADV VINCENT MALEKA SC:** Yes. Then, last paragraph on page 80, you now call for the establishment of an independent Public Inquiry in terms of section 41 (a) of the Public, of the Promotion of the Administrative Justice Act and by chapters 10 Institution and so on. It's a matter of public knowledge that the only Public Inquiry beyond the Public Protectors, processes is a President Inquiry.

MR THEMBA MASEKO: That's correct Chairperson. That's what we had in mind.

ADV VINCENT MALEKA SC: Mr Maseko I'm going to move away from this document, unless there is any other issue arising from this document that you would wish to bring our attention to.

MR THEMBA MASEKO: Not at this stage Chairperson.

ADV VINCENT MALEKA SC: Are you sure? Can I ask you to look at page 81?

MR THEMBA MASEKO: Page 81. Let me go to [intervenes]

ADV VINCENT MALEKA SC: That now to made paragraph.

MR THEMBA MASEKO: That is correct Chairperson. I responded the way I did because it is my view that almost everything that's contained in that statement is
10 absolute important but it is important for especially people who may not have seen this document, to actually state that to read it final paragraph with your permission council?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO:

"We call upon the Minister of the Public Service and Administration to create an enabling environment to allow all public servants to act in terms of the existing prescripts and to freely come forward and to provide information to the Public Inquiry as well as to report any bridges of the relevant legislation, regulations and codes of conduct."

20 So you could say that this was a call to action by the forum of directors union.

ADV VINCENT MALEKA SC: Yes. And what you presage in that regard is the concern that the Chairperson has publicly noted to the commencement of this inquiry. Are you

able, as you sit here in the witness box, are you able to indicate yours persons, whether you do it confidentially, who you believe have information that can assist the Commission?

MR THEMBA MASEKO: Chairperson I am convinced that there are a number of Senior Public Servants, Middle Managers, who have had experiences with a number of individuals, including the Gupta family, but it could also be pertaining to the conduct and behaviour of their political bosses. Ministers and MEC's and Premiers, who could be willing to, who have information, who may be willing to give that information to your Commission. But it is my honest view that the reason why they may not be able to come
10 through is because of fear of reprisals, loss of jobs and generally the country's maybe unwillingness or inability to support those who are willing to come forward and give information so. I may not be able give you names as we're sitting here but even in the process leading to the drafting of this Memorandum by Directors General, a number of seven DGs that come forward. Some of their DGs were included in that Memorandum, also did have their own experiences. Be it with the Gupta family or the conduct of their political principals, and the idea was that at the end of this Memorandum we were going to be able to encourage more and more people to come forward and tell their stories, but unfortunately we found ourselves in the situation that you Chairperson find yourself in. Very few people were willing to come forward and speak out.

20 **CHAIRPERSON:** But I would imagine that anyone of those former Directors General who were happy to be signatories to that Memorandum, I would imagine that anyone of them who was involved in that Memorandum and who may have had experiences that they would be the type of people who would be prepared to come forward. What's your view of that?

MR THEMBA MASEKO: Yes. Yes. Sorry to interrupt you Chairperson. My view is that a lot of them were willing to come forth if the response to our Memorandum was positive and a certain Zondo Commission or some other Commission was established at the time, it should have been possible for some of them to come forward.

CHAIRPERSON: Yes.

MR THEMBA MASEKO: But because there was no action, I think that the issue just, in a ways, faded away.

CHAIRPERSON: Because I'm thinking that their, your and their conduct in putting together that Memorandum, such as that they are people of courage, and they were
10 prepared at that time to take a certain stand which might not have been popular politically in terms of Government and maybe if they were prepared at that stage if there was a Zondo Commission that was established immediately, maybe they might be prepared now and maybe they might just need a little bit of encouragement and so on.

MR THEMBA MASEKO: I certainly, Chairperson, I certainly hope so and I think that the political climate has somewhat changed. I think that there may just be a willingness to speak. We must recall that at the time there was plenty evidence that those who had spoken against certain practices that was starting to imagine Government where, so to speak, dealt with and left to the service. At the time for example one of the issues we spoke about in that forum of Directors General, was the fact that there was just
20 one example councillor, a case of Heads of Intelligence Services who had written a report expressing their concerns about the significant influence that the Gupta family seems to be having and I believe they might have used the phrase the Gupta family may become a security risk going an intelligence risk for the country ... I can't recall what exactly terms they used. But I believe there's a document to that effect. What we saw was what I may

call an “unprecedented move” where all the Heads of Intelligence Services were removed from their positions. So I think that there could be lots of evidence presented to show that those who spoke at the time ended up losing their jobs. But I think that if we fast tracked today I don’t know how the call could be made, I think that more and more people may be willing to share their experiences.

CHAIRPERSON: No, Thank you very much. The Legal Team and the Investigators obviously are hearing and I would like that serious efforts be made to see if some of those former Directors General could be contacted because by virtue of the positions they have held a lot of them could be knowing a lot of information that is relevant for this
10 commission and the country does need that information and if they could come up and have the courage to be signatories to the Memorandum that we are talking about I don’t see any reason why they would not be able to rise to the occasion now. So the Legal Team and Investigators will take note and thank you very much for that information Mr Maseko.

MR THEMBA MASEKO: I must say Chairperson that I may just loose one or two friends but...

ADV VINCENT MALEKA SC: Mr Maseko your prescient in the last paragraph of your Memorandum, we will appeal through your lawyers to give us such information and names as you can have. Actually I see that there is one ten that I may have taken unduly
20 but is. Is this a convenient time to break?

CHAIRPERSON: No that’s fine I think let’s take the lunch break. It’s 13h14 on my watch. Let’s resume at 14h15. Thank you, we will adjourn.

COURT CLERK: All rise.

HEARING ADJOURNS

[End of recording]

Session 4

STATE CAPTURE INQUIRY
PARKTOWN, JOHANNESBURG

29 AUGUST 2018

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CHAIRPERSON: Thank you, Mr Maleka.

ADV VINCENT MALEKA SC: Thank you, Chair. Chair, before I resume, I believe that Mr Maseko is ready to pay his first instalment.

CHAIRPERSON: Mr Maseko, you are still under oath. You want to say something. Thank you.

MR THEMBA MASEKO: Chairperson, with due respect, I would like to tender an apology for the error that I made earlier on. I was asked a question by Counsel about who was the Deputy President at the time. I am aware that there has been lots of changes in Government, but my response to his question was that the Deputy President at the time was Mr Kgalema Motlanthe. And for the record I would like to state that it was an error. The Deputy President at the time was Mr Cyril Ramaphosa.

CHAIRPERSON: Yes, thank you very much, and that was 2016.

MR THEMBA MASEKO: Pardon?

CHAIRPERSON: That was 2016.

MR THEMBA MASEKO: 2016.

CHAIRPERSON: Ja.

MR THEMBA MASEKO: Yes.

CHAIRPERSON: Thank you.

20 **ADV VINCENT MALEKA SC**: Thank you, Chair. Mr Maseko, you don't have to feel extraordinary apologetic about it. I am told that in Switzerland, Chair, even my colleagues don't know who their president is at any point in time, given the rule of, the nature of the

democratic system they have, because their presidents change every year. So, we have had a number of cabinet reshuffles, so you should not apologise unduly, Mr Maseko. But on a serious note, we have just completed what you wanted to say with regards to Annex A of the press statement, that is the document at pages 80 and 81. Can I conclude by asking you this, have you had any response from any of the members of the National Executive to that memorandum you addressed to them? Did anyone of or all of them, respond to you?

MR THEMBA MASEKO: Chairperson, just for my clarity. Are you referring to the DG's memorandum, Annexure A?

10 **ADV VINCENT MALEKA SC**: Yes. Remember you had told the Chairperson that you addressed to four members of the Executive and you have identified them. What I want to understand is, have you received any response from any of them?

MR THEMBA MASEKO: We did not receive any written response. However, the Office of the Minister of Finance at the time, Mr Pravin Gordhan, did make contact with us with a promise for a meeting to be convened with the forum. The Minister of Public Service and Administration at the time, Minister Ngoako Ramathlodi, also got back to us through his advisor, to inform us that he had received the memorandum and that he was going to come back to us with a date for a meeting. The meetings, I have just mentioned, did not materialise. The offices of the President at the time and Deputy President, through our
20 own follow-ups did acknowledge receipt of the memorandum verbally, but there was no commitment for a meeting or to respond to the issues raised in the memorandum.

ADV VINCENT MALEKA SC: Yes. So, from your answer, is it fair conclude then that there was no meeting at all.

MR THEMBA MASEKO: Following the submission of this memorandum?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: There was no formal meeting.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: I am sorry, Mr Maleka, is it more correct to say that Annexure A was addressed to two people and two were copied? I thought you might have said they were addressed to four and the witness agreed.

ADV VINCENT MALEKA SC: Yes, it was two.

CHAIRPERSON: Mm.

ADV VINCENT MALEKA SC: Subject to that qualification, do you still stand by your
10 answer that no meeting with any or all of them took place?

MR THEMBA MASEKO: As far as I am aware, yes, no meetings.

ADV VINCENT MALEKA SC: Thank you. We are still sequencing the documents in your pack. The next document, as I picked it up, is the document that begins on page 82.

CHAIRPERSON: I am sorry again, Mr Maleka. Just as a matter of interest, Mr Maseko, is there anything significant about the choice of the two addressees in Annexure A? Is there any particular significance or reason why it was those two who were decided, whom you decided should be addressed in that memorandum? That is Minister Pravin Gordhan and the then Minister of Public Service and Administration, Mr Ngoako Ramathlodi.

MR THEMBA MASEKO: The reason why we targeted those two ministers, was firstly
20 because we thought that the most important pieces of legislation that was not being complied with, was the PFMA (the Public Finance Management Act) and the minister in charge of that particular piece of legislation was the Minister of Finance. As far as

appointments in the public service was concerned, the minister responsible was the Minister for Public Service and Administration. Ordinarily, if I may add, Chairperson, this memorandum should have or would have been sent to the President of the Republic at the time. But because a lot of the issues and complaints that were in the public space, were in one way or the other implicating the President of the Republic. So, that is why the President was not the primary recipient of the letter.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: Thank you, Chair. I had asked you to confirm that in sequence, the next document emanating from you begins at page 82.

10 **MR THEMBA MASEKO**: Yes, I have got it.

ADV VINCENT MALEKA SC: And it runs up to page 91. Can I ask you, in your own words, to identify and describe this document to the Chair?

MR THEMBA MASEKO: Chairperson, this is the document I prepared in preparation for my meeting with the Public Protector in 2016. It was submitted to the Public Protector's Office. It was essentially similar if not identical to the document that I submitted to the Secretary General of the African National Congress.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: When did you submit this document to the Public Protector?

20 **MR THEMBA MASEKO**: When did I submit it?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: It was on the afternoon of the 17th of August 2016.

ADV VINCENT MALEKA SC: And we know, Mr Maseko, that you were interviewed by the Public Protector on the 17th of August 2016.

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: Chair, the date of the interview is recorded in the transcript of that interview. You will find it from page 20 of the Maseko bundle.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: That is Exhibit E1, page 20.

CHAIRPERSON: Okay.

10 **ADV VINCENT MALEKA SC:** So, you say you prepared this document in anticipation of that interview.

MR THEMBA MASEKO: Yes, I did.

ADV VINCENT MALEKA SC: And you sent it to the Public Protector before that interview.

MR THEMBA MASEKO: I gave it, well I sent it to the Public Protector at the end of the interview.

ADV VINCENT MALEKA SC: At the?

MR THEMBA MASEKO: At the end of the interview.

ADV VINCENT MALEKA SC: Okay. And how did you give it to the Public Protector?

MR THEMBA MASEKO: I sent it via email.

20 **ADV VINCENT MALEKA SC:** Yes. Chair, I am not going to canvas the details of it, because it repeats or reflects some substantial degree of communality with the statement

that Mr Maseko has made for the purposes of this hearing. So, I would rather deal with the details when I get to that statement.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: But, Mr Maseko, there is something which is different in that submission to the Public Protector, which one does not find in the statements and/or the transcript of the interview. If I may ask you to go to page 90, and I would like to invite you to look at page 90 paragraph 52 and paragraph 53, because I would like to pose some questions to you for your comment. Are you there?

MR THEMBA MASEKO: Yes, I found it.

10 **ADV VINCENT MALEKA SC**: In paragraph 52 you say the following: "I consider the approach by the Guptas and the manner in which they set to put pressure on me was inappropriate, uncalled for and irregular. The use of threats against me, amounted to bullying and attempting to force me to break all Government procurement processes and procedures. I refused to cooperate." Can I stop there for a moment and ask you, what was the basis of the conclusion you expressed in the paragraph I have just read to you?

MR THEMBA MASEKO: Chairperson, what that paragraph sought, and still does, to communicate was, my view at the time still is my view as we speak, that the approach by the Gupta family was inappropriate in various respects. Firstly, making demands on me as a public official, not just an ordinary public official, the GCIS was part of the
20 Presidency. So, a senior official was also working in the Presidency. Making demands, summoning me to their house and threatening that if I do not do what they are asking of me, I will be dealt with. I found that to be inappropriate, irregular and uncalled for. And in a sense, they were asking me to break the laws of the land, because of the demands that they were placing on me. So, that is the message the paragraph is trying to portray.

ADV VINCENT MALEKA SC: Yes. And in paragraph 53 you draw the following conclusion: “This approach by the Gupta family was contrary to Section 217 (1) of the Constitution and the Public Finance Management Act (PFMA).” In what respect did you regard the Gupta family’s approach as being contrary to those two legislative instruments?

MR THEMBA MASEKO: Chairperson, those two pieces of legislation are [inaudible] in my view. They define the manner in which public resources must be managed and spent. They talk to principles of openness, fairness, effective cost management and not spending public money for the benefit of an individual or a family or a particular company
10 that there needs to be transparency through and through. And the approach by the Gupta family, in my view, was running very contrary to those principles.

ADV VINCENT MALEKA SC: Then we will turn to that theme of sequence. The next document I find, following upon your submissions to the Public Protector, which we have just dealt with, is the transcript of the interview with the Public Protector. It begins at page 20. Do you see that?

MR THEMBA MASEKO: I have got it.

ADV VINCENT MALEKA SC: And it is fairly longish compared to the other document. It runs to approximately 44 pages, it ends at page 64. Can I ask you to confirm that before you came to take the witness box, you have read that transcript of your interview?

20 **MR THEMBA MASEKO:** Chairperson, I have read the transcript not once, but several times. So, I have read it.

ADV VINCENT MALEKA SC: Yes. Chairperson, we’ll get to some of the details to the extent that we consider them necessary to place before you.

MR THEMBA MASEKO: Counsel, can I just interrupt you for one second, if I may?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: The transcript is accurate, safe to say that there are instances where it does say inaudible, some sentences are incomplete.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: But overall, the document is accurate.

ADV VINCENT MALEKA SC: And you consider it a fair reflection of the discussion that took place between you and the Public Protector's representative who was present and conducted the interview.

10 **MR THEMBA MASEKO**: Without any doubt, Chairperson.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Is there any significance of the inaudible parts of it, in so far as you are concerned, that may impact upon what you consider a truthful reflection of the interview?

MR THEMBA MASEKO: Chairperson, for somebody who was not at the meeting, they may not understand what is contained in a particular sentence. But for me, because I did the interview, I know what it sought to include.

ADV VINCENT MALEKA SC: As far as you are concerned, there is no moment about the inaudible part of it. If our learned friends choose to seek any accurate complete
20 reflection of it, then they must go and seek the audio version of it.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: But I don't think for your part it is necessary to go that length.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: Mr Maseko, the next is the affidavit ...intervened.

CHAIRPERSON: I am sorry, Mr Maleka, I take it that what you mean, Mr Maseko, includes that because you were part of the interview, even where the transcript might say inaudible, you are able to remember what was said.

MR THEMBA MASEKO: Yes, Chairperson, I remember what was said.

CHAIRPERSON: Okay, thank you.

10 **ADV VINCENT MALEKA SC**: Chairperson, I had to clear that issue so that if our learned friends are going to be afforded the privilege of cross-examination, they must know the attitude of Mr Maseko that nothing arises and nothing is of moment from the inaudible part of the transcript.

CHAIRPERSON: No, I understand, ja. Thank you.

ADV VINCENT MALEKA SC: At least they are forewarned, Chair. The next is page... is the affidavit which begins at page 9.

MR THEMBA MASEKO: I have got it, Chairperson.

ADV VINCENT MALEKA SC: And as far as I can pick it up, it ends at page 19.

MR THEMBA MASEKO: Yes, it does.

20 **ADV VINCENT MALEKA SC**: Right. Mr Maseko, we will get to the details of this affidavit, but can I ask you to tell us when you made it.

MR THEMBA MASEKO: Chairperson, I happened to be one of those people play a game called Twitter and in my timeline, I have what is called a DM. For your benefit, Chairperson, this is direct message.

CHAIRPERSON: Well, I need that explanation, yes.

MR THEMBA MASEKO: I was going through my Twitter messages and I got a message, a direct message from a person who identified themselves as Captain Govender, who requested me to call him as a matter of urgency because the, I think he said the Hawks were doing an investigation in which he thought I can be of assistance to them. He left his mobile number on the direct message. I returned his call. He then
10 informed me that they were doing an investigation on state capture. They had read some of the statements that I made in the media and they would like to interview me. I agreed and had a meeting with him. He then asked me to prepare an affidavit that will actually contain all the statements that I have made in the media. But also, to share my experiences with the Gupta family. So, that affidavit is a product of my discussion with Captain Govender.

ADV VINCENT MALEKA SC: With Captain Govender.

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: Did you appreciate the time you made it, that this affidavit may be used for some other purpose, other than the one for which you intended?

20 **MR THEMBA MASEKO**: He made it very clear to me that the Hawks were conducting an investigation on state capture and they wanted an affidavit from me. So, I understood ultimately it was going to be part of some legal process. At that stage there was no decision to set up a commission on state capture, but I knew that it was going to end up in some legal process, yes.

ADV VINCENT MALEKA SC: So, in as far as you are concerned, this was an affidavit prepared for the Hawks.

MR THEMBA MASEKO: That is the impression I had, yes.

ADV VINCENT MALEKA SC: Then, can I ask you to confirm the date of that affidavit on page 18?

MR THEMBA MASEKO: The affidavit was signed on the 22nd of June 2017. Sworn in and signed by the Commissioner of Oaths who was Captain Progasen Govender.

ADV VINCENT MALEKA SC: Yes. Again, we'll come back to the details of that affidavit. And then the next in sequence is the affidavit which begins at page 6. Are you there at
10 page 6 of Exhibit E1?

MR THEMBA MASEKO: I have got it, Chairperson.

ADV VINCENT MALEKA SC: Yes. It runs up to page 8.

MR THEMBA MASEKO: Yes, sir.

ADV VINCENT MALEKA SC: Can I ask you to start first of all with page 8? I would like to authenticate your signature. Is that your signature?

MR THEMBA MASEKO: That is indeed my signature, Chairperson.

ADV VINCENT MALEKA SC: And when did you execute this affidavit?

MR THEMBA MASEKO: It was on the 24th of August 2017.

ADV VINCENT MALEKA SC: And where were you at the time?

20 **MR THEMBA MASEKO:** This was done at my offices in Sandton.

ADV VINCENT MALEKA SC: Yes. And you will see the Commissioner of Oaths is someone who, by now, must have been familiar to you.

MR THEMBA MASEKO: Yes, it was Captain Govender.

ADV VINCENT MALEKA SC: Is it the same captain who took the first affidavit?

MR THEMBA MASEKO: Yes, it is, Chairperson.

ADV VINCENT MALEKA SC: Can you explain to the Chairperson why did it become necessary for Captain Govender second time around to seek another affidavit?

MR THEMBA MASEKO: Chairperson, Captain Govender called me to say that he had discussions with his colleagues and they felt that there was some additional information they required regarding my details of my experiences of the Gupta family. So, it was necessary for me to depose of the second affidavit, which just confirms a lot of the details that they felt were not included in the initial affidavit.

ADV VINCENT MALEKA SC: And that is the detail that you provide and Chairperson will go through the detail later on. From paragraph 1 to paragraph 8 of that affidavit... We will get to that detail later on, Mr Maseko. We are now at a stage where we have completed the sequence of your document. We are now at the stage where you have made disclosures to investigative bodies, such as the Public Protector, to the Hawks via Captain Govender. We are now at the stage where you've made media statements about complaints relating to what you considered to be irregularities and illegalities. You have almost brought to the attention of the country all of these things. Question that I would like you to deal with is this, in so far as law enforcement agents such as the Hawks are concerned, have you been told by anyone on their behalf about the state of the investigation with reference to the contents of the allegations made, affidavits given to them?

MR THEMBA MASEKO: Chairperson, around April 2018, I got a call from the Hawks requesting a meeting with me to take the matter forward. They informed me that the matter had now been handed over from Captain Govender to a new team of investigators, who were now preparing to take the matter to court. And what they told me is that they were looking at possibly charging Mr Ajay Gupta and President Zuma and they wanted to just go through the affidavits, the two affidavits again in preparation of that matter. So, the meeting did take place, I can confirm the date, it is probably in my diary. So, I was given the impression that they were actually getting ready to proceed with the case. If I may just add one little detail, Chairperson. Subsequent to the raid of the

10 Saxonwold Compound, in some of the media statements I did read that one of the matters that the Hawks said they were investigating, was my complaint, the issue that I raised in my affidavit. But a few weeks after that exchange, they then came back to me to inform me that that matter, my matter was no longer going to be followed through. So, as I am sitting here, I am under the impression that in fact that matter has been... I think the words that they used was that the matter has been put in abeyance or something. But it is no longer happening, I should relax.

ADV VINCENT MALEKA SC: Mr Maseko, I think it is important that you should look at your diary and come back to us with the date. You don't have to do it now, but that instalment number 2.

20 **MR THEMBA MASEKO**: We'll do so, Chairperson.

ADV VINCENT MALEKA SC: Thank you. In the documents that you've given us, your next interphase with the Hawks arises from a media publication, more specifically the Sunday Times. It is in Exhibit E1 and I would ask you to go to page 102.

MR THEMBA MASEKO: Okay, I found it, Chairperson.

ADV VINCENT MALEKA SC: Remember in context, as far as you are concerned, the matter is in abeyance. Then comes this Sunday Times publication. Can I confirm this with you that you have read it, correct?

MR THEMBA MASEKO: Pardon?

ADV VINCENT MALEKA SC: Have you read this Sunday Times?

MR THEMBA MASEKO: Yes, I have read this, Advocate.

ADV VINCENT MALEKA SC: In the interest of time, can I ask you to sum up what it says for us.

MR THEMBA MASEKO: Chairperson, with due respect, I just need to clarify that there
10 are two matters with the Hawks.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: The matter that you were raising a few minutes ago, was with regard to the Hawks doing an investigation with the view to laying charges against Ajay Gupta and the President, regarding the GCIS matter.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: The article in page 102 refers to a subsequent interaction with the Hawks, which is on a different matter.

ADV VINCENT MALEKA SC: And I would like you to explain to the Judge what that different matter is.

MR THEMBA MASEKO: Okay. The subsequent interaction with the Hawks,
20 Chairperson, was as I was in conversation with the Hawks about their investigation of the GCIS matter with the Guptas, I then got contacted by somebody else from the Hawks

who said they wanted a meeting with me to discuss a matter that has to do with public works. And I agreed to the meeting and I had a meeting with the captains who were investigating the matter. On my arrival at the venue for the meeting, I was asked if I had brought my lawyer with to the meeting.

ADV VINCENT MALEKA SC: Who was your lawyer at the time?

MR THEMBA MASEKO: Well, for that matter I didn't have a lawyer.

ADV VINCENT MALEKA SC: Okay.

MR THEMBA MASEKO: I did not have a lawyer, because I didn't know what the issue was about.

10 **ADV VINCENT MALEKA SC**: Yes.

MR THEMBA MASEKO: So, on my arrival I was asked if I had a lawyer. I expressed surprise, because I was just responding to your request for a meeting, in my view it was the first meeting to discuss whatever they wanted to discuss. It transpired at that first meeting that in fact it was a different team all together, which had nothing to do with the first matter that he was raising. They wanted to discuss a procurement of an IT system that took place during my tenure as a Director General in the Department of Public Works. The procurement took place around 2005, I believe. So, they were investigating that matter, particularly my role in the awarding of that particular contract. So, they wanted to know if I was prepared to do the interview with them in the absence of an attorney. I said, look, let's have a discussion, ask me whatever questions you want. But they then asked me if I wanted to do the interview and then sign a statement during the course of the meeting. But they also made me aware that I have an option not to sign any statement, to procure the services of an attorney and that then prepare a short statement that I will submit to them. I declined the invitation to sign, I opted to consult an attorney

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and Mr Maseko here is my attorney. We then set up a follow-up meeting with them, to discuss the very same matter to do the interview, because my point was essentially that this is an incident that took place in 2005. I was aware that the matter was investigated, but I was also aware that the matter had been concluded. But they insisted that we prepare a statement, because they were having a meeting with a prosecutor the very next week or within 10 days ...intervened.

ADV VINCENT MALEKA SC: Mr Maseko, sorry to interrupt you and my apologies to be rude.

MR THEMBA MASEKO: Okay.

10 **ADV VINCENT MALEKA SC:** You talked about Mr Maseko being your attorney and you are Mr Maseko. So, anyone who reads the record might well be confused.

MR THEMBA MASEKO: Oh.

ADV VINCENT MALEKA SC: Can I ask you to give us the full details of your attorney who is Mr Maseko? And if there is any relations between the two of you, you might well have to explain that to us.

MR THEMBA MASEKO: Okay. My attorney is Tyron Maseko.

ADV VINCENT MALEKA SC: Tyron?

MR THEMBA MASEKO: Tyron Maseko.

ADV VINCENT MALEKA SC: Yes.

20 **MR THEMBA MASEKO:** He is the young man sitting in front here.

ADV VINCENT MALEKA SC: Any relations?

MR THEMBA MASEKO: Chairperson, all Maseko's are related.

CHAIRPERSON: Well, Mr Maseko, I can just say I always think that all Zondo's belong together. But, I guess Counsel wants on a serious note.

ADV VINCENT MALEKA SC: Yes, and just to make sure that when I read the record next time around, I don't confuse you being your attorney.

MR THEMBA MASEKO: Oh okay. He is Tyron Maseko, not blood relation.

ADV VINCENT MALEKA SC: Thank you. I am sorry, can you then proceed from where I interrupted you?

MR THEMBA MASEKO: Okay. So, at the end of that meeting, my attorney and I agreed that we will prepare a short statement that we will submit to them.

10 **ADV VINCENT MALEKA SC**: Yes.

MR THEMBA MASEKO: And we made it very clear to them that because of lack of access to documentation about that particular tender, we will just prepare a preliminary statement that we will just give to them, because they needed to make a presentation to the prosecutor. And the promise they made was that they will come back to us within a week of us submitting such a document. To date we have not received any response from that office. We have written at least two letters to find out what is the status of that particular investigation.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: To date we have not received any response.

20 **ADV VINCENT MALEKA SC**: I would like to take you quickly through those documents. Chair, they have been put in the bundle, but they are out of sequence. So, with your permission, can I just deal with them in order to show some sequence?

CHAIRPERSON: Ja, thank you.

ADV VINCENT MALEKA SC: Mr Maseko, you have dealt with the article at page 102. And the sum total of that article is a suspicion that you had been involved in the award of an IT contract in circumstances which may have been irregular. And then you were asked to make a statement. And I would like to start with a document which is an email dated 8 June 2018. And that email is on page 92.

MR THEMBA MASEKO: I got it.

ADV VINCENT MALEKA SC: That email is addressed to Captain Masilela.

MR THEMBA MASEKO: That is correct, yes.

10 **ADV VINCENT MALEKA SC:** And it appears to come from Mr Tyron Maseko, who we now know is your attorney.

MR THEMBA MASEKO: That is correct.

ADV VINCENT MALEKA SC: And I take it that you are aware of this email.

MR THEMBA MASEKO: Yes, I am aware, Chairperson.

ADV VINCENT MALEKA SC: And in it, your attorney says: "I refer to the above matter in keeping with our undertaking to you, following our meeting on Wednesday. Please find attached my client's statement in respect of case number 486/02/2017. We trust that this will be of assistance to your investigation." Do you see that?

MR THEMBA MASEKO: Yes, I have got that.

20 **ADV VINCENT MALEKA SC:** Who is Captain Maseko, Masilela?

MR THEMBA MASEKO: Captain Masilela is the Captain from the Hawks who approached me regarding this particular matter.

ADV VINCENT MALEKA SC: The email references the meeting of Wednesday. Was he part and parcel of that meeting?

MR THEMBA MASEKO: That is the gentleman we met, yes.

ADV VINCENT MALEKA SC: Good. And then the statement follows from page 93.

MR THEMBA MASEKO: I've got it.

ADV VINCENT MALEKA SC: It ends up at page 96. Is that the statement which was attached to Mr Maseko, your attorney, email?

MR THEMBA MASEKO: Chairperson, it ends at page 97.

ADV VINCENT MALEKA SC: 97.

10 **MR THEMBA MASEKO**: Yes. That is the statement, correct.

ADV VINCENT MALEKA SC: Alright. And you signed it on page...

MR THEMBA MASEKO: I signed it on page 97.

ADV VINCENT MALEKA SC: 97?

MR THEMBA MASEKO: Ja.

ADV VINCENT MALEKA SC: Alright. And then, thereafter follows an email, which is on page 99. I skipped the one on... well, let me deal with the one on page 98 first. It is dated 26 June 2018. Do you see that?

MR THEMBA MASEKO: I see it, Chairperson.

20 **ADV VINCENT MALEKA SC**: And it is addressed to someone called masileladaniel@saps.gov.za. Do you see that?

MR THEMBA MASEKO: Yes, I see that, Chairperson.

ADV VINCENT MALEKA SC: Are you able to identify whose email is that?

MR THEMBA MASEKO: Masilela is still the Captain from the Hawks that we had a meeting with.

ADV VINCENT MALEKA SC: And it references the same case number.

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: Do you see that?

MR THEMBA MASEKO: I see that.

ADV VINCENT MALEKA SC: "Dear sir, kindly find the attached letter for your attention."

Do you see that?

10 **MR THEMBA MASEKO**: I see that, yes, sir.

ADV VINCENT MALEKA SC: And is that attachment, the letter which begins at page 99?

MR THEMBA MASEKO: That is correct, yes.

ADV VINCENT MALEKA SC: I am going to deal with some few issues relating to the contents of that letter. Paragraph 1 references the meeting of 6 June. Do you see that?

MR THEMBA MASEKO: That's correct.

ADV VINCENT MALEKA SC: And then paragraph 2 repeats the undertaking that you made at the meeting that you will make the statement. Correct?

MR THEMBA MASEKO: That's correct.

20 **ADV VINCENT MALEKA SC**: We have seen the statement. And then paragraph 3 says the following, I would like to read it and invite you to comment: "You advised that you

would revert to us during the course of last week on the National Prosecuting Authority's (NPA) decision on the docket. However, to date we have not heard from you." Do you see that?

MR THEMBA MASEKO: I see that, correct.

ADV VINCENT MALEKA SC: Paragraph 4: "May I request that you please advise us of the status of the docket, i.e. what decision has been made by the NPA if any. We look forward to hearing from you as soon as possible."

MR THEMBA MASEKO: That is correct, yes.

ADV VINCENT MALEKA SC: And, Mr Maseko, you have given the statement on the
10 cover of the email of 8 June. It is now almost 18 days down the line and you are asking for progress in terms of your attorney's letter dated 26 June 2018. Did you receive any progress report thereafter from the Hawks, especially Captain Masilela?

MR THEMBA MASEKO: Chairperson, we were getting anxious because this was beginning to have a negative impact on our preparations for this particular Commission. But to answer your question more directly, we had not received any correspondence at that point.

ADV VINCENT MALEKA SC: That was not the last of the follow-up that your attorney made to Captain Masilela. If you turn to page 100.

MR THEMBA MASEKO: I have got that.

20 **ADV VINCENT MALEKA SC**: You will see a similar cast of characters that we now know by now. First is your attorney, Tyron Maseko. The date is 9 July 2018. Do you see that?

MR THEMBA MASEKO: I see that.

ADV VINCENT MALEKA SC: And the intended recipient is masileladaniel@saps.gov.za. We know who he is.

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: And the reference is to the same case number. And then the body of the email says: "Kindly find the attached letter for your urgent attention." Do you see that?

MR THEMBA MASEKO: I see that, sir.

ADV VINCENT MALEKA SC: And the attachment is on page 101.

MR THEMBA MASEKO: I see that.

10 **ADV VINCENT MALEKA SC:** I've read it, you've read it, can you just quickly sum up its contents for us?

MR THEMBA MASEKO: The letter on 101?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: Basically, the letter reads as follows, Chairperson: "I refer to the above matter in our letter dated to you 26 June 2018. In that letter we indicated that our client still awaits official communication of the decision of the State as regards its intention in case number 486/217, which decision we reasonably believe ought to have been made by now given the duration of the investigation, undertakings made to us, as well as our client's cooperation in the investigation. Kindly let us know how the State
20 intends to proceed herein as a matter of urgency. We look forward to hearing from you. Yours faithfully, Tyron Maseko."

ADV VINCENT MALEKA SC: It is now a period of a month after this follow-up by Mr Maseko, your attorney.

MR THEMBA MASEKO: Yes.

ADV VINCENT MALEKA SC: Has there been any response?

MR THEMBA MASEKO: No response at all, Chair.

ADV VINCENT MALEKA SC: There appears to be a pattern of behaviour and we will argue that pattern later on before the Judge.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: Because the Judge has thus far heard evidence from Mr
10 Jonas about the conduct and behaviour of the Hawks in relation to a matter that was raised with him.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: Ms Mentor testified about a behaviour from the Hawks. You have given your evidence around the Hawks' behaviour in relation to a suspicion hanging over your head. How do you feel about it?

MR THEMBA MASEKO: Well, I see it as, Chairperson, I see it as an unwelcome distraction and it was a complete surprise to me. At that stage I was ceased with two big legal issues. The first one was the original Hawks investigation about the Guptas and the GCIS matter. Secondly, I was ceased with preparations for this Commission. Both
20 contacts with the Hawks came after the announcement that the Zondo Commission has been established. But more relevant is that both initiatives came after the Zondo Commission made its announcement that it will proceed with its work. I think the initial statement said the work was going to start in August or July, somewhere there. So, this

became an unwelcome distraction, because it meant that instead of me spending time with my attorney preparing for today, I had to now try and get information. And the biggest issue was that this investigation pertained to a matter that took place about 13 years ago during my duration as DG of Public Works. I had no access to any documentation and information. So, preparing even that initial statement that I submitted to them, was largely based on memory, because I did not have access to any documentation. So, it was a distraction, a surprising one for that matter.

ADV VINCENT MALEKA SC: Mr Maseko, I am going to conclude on this issue by asking you to turn back to page 102. And you will see that the second last unnumbered
 10 column on the left-hand column of that newspaper article suggest that the Sunday Times did something far more than you did and they were able to contact the Hawks and that there was a response, supposedly, and I put it no higher than that, on behalf of the Hawks. And I would like to read it out and ask you to comment. And, Chair, I accept that this is the news report that given the nature of the inquiry before you, we will not be faced with a frontal objection of hearsay.

CHAIRPERSON: Mm.

ADV VINCENT MALEKA SC: It reads as follows, Mr Maseko, please bear with me if I am too slow for you. "Hawks Spokesman, Hangwani Mulaudzi, said he was not aware of the case and did not know the individual who had met Maseko." I will stop there for a
 20 moment. I am not saying this is the true version of the Hawks. But, if what is recorded here is true, what will be your response to a claim that the Hawks were not aware of this case and none on behalf of the Hawks met with you?

MR THEMBA MASEKO: Chairperson, there are events that happened after the publication of this meeting, which we may talk to later. But to answer your question, I

was extremely shocked and taken aback by that comment, because I was convinced that the people that I met were indeed coming from the Hawks. To the extent that when we, in the first meeting in Sandton, they did produce their ID cards, so I was convinced that it was with them. But secondly, and rather I should say fortunately, for the second meeting, because the first meeting I attended alone, for the second meeting my attorney, Mr Tyron Maseko, was present with me. And the second meeting took place at the Headquarters of the Hawks in Silverton in Pretoria. There was no basis or reason for us to suspect that these two individuals we met were not from the Hawks. And the email address they gave us, as you can tell from those annexures that you've referred to, the ID numbers looked
 10 like official ID numbers. Should I move on to events beyond or after the publication?

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: Because I think they may assist you, Chairperson, with this matter. So, when the article was published, I then made contact with my attorney to just draw his attention to this article, because it was of great concern that the Hawks were saying that they were not aware of the investigation. My telephone was ringing off the hook that whole Sunday and I basically switched it off. In the evening of that Sunday of the... when was this article published? The publication of this article?

CHAIRPERSON: The publication seems to be March 2016.

ADV VINCENT MALEKA SC: 22 July.

20 **MR THEMBA MASEKO:** I think we need to get the date of this article.

ADV VINCENT MALEKA SC: Can you go to Exhibit E1, the index to the evidence bundle?

MR THEMBA MASEKO: Ja.

ADV VINCENT MALEKA SC: Look at item 9.

MR THEMBA MASEKO: Yes, that is the date. Because the date in the copy says 2016, but the correct date is this one, 20th of July 2018.

ADV VINCENT MALEKA SC: 22.

MR THEMBA MASEKO: I mean 22 July 2018.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: So, the heading at the top of that article may be misleading, because it gives impression that the article was published in 2016, that's not correct. But anyway ...intervened.

10 **CHAIRPERSON**: Sorry, I just want to make sure that we are all on the same page.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: So far, I have been looking at the article on page 102 of Exhibit E1.

ADV VINCENT MALEKA SC: Yes.

CHAIRPERSON: Are we on the same page?

ADV VINCENT MALEKA SC: We are on the same page, sir.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: The point which Mr Maseko makes is that if you look at the top right-hand column.

CHAIRPERSON: Ja.

20 **ADV VINCENT MALEKA SC**: There is a reference to the date.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: And that is not the date of the publication of the article.

CHAIRPERSON: Oh.

ADV VINCENT MALEKA SC: It is a date relating to a publication of a prior story.

CHAIRPERSON: Oh okay, now I understand.

ADV VINCENT MALEKA SC: And that emphasis the publication of the article on page 102.

CHAIRPERSON: Yes.

ADV VINCENT MALEKA SC: 22 July 2018. You'll get that from page 1, the index document.

10 **CHAIRPERSON**: Oh.

ADV VINCENT MALEKA SC: Item 19.

CHAIRPERSON: Okay. Maybe for my purposes it is going to be ...intervened.

ADV VINCENT MALEKA SC: Chair, we would ask you simply to scribe 22 July 2018 at page 102.

CHAIRPERSON: Thank you very much. You may proceed.

20 **MR THEMBA MASEKO**: May I proceed? Thank you, Chairperson. So, as I was saying, my phone rang off the hook and I switched it off. When I switched it back on, late Sunday afternoon around 18:00 on the 22nd, I then got a call from Mr Mulaudzi from the Hawks, who is somebody I have worked with in Government, I know very well. I can almost claim him to be in a friend. We have been in the Government communication space together. He was in a sense reprimanding me for not answering calls, because he said his Minister and the Head of Hawks had been trying to get hold of me, because they saw this story

and they are extremely worried about it. He then said he is going to put me in touch with the Head of the Hawks. I think it is General Lebeya, if I am not mistaken. And I said I am going to keep my cell phone on and the Head of the Hawks can call me and we can talk. Literally a few minutes later the General called me to ask me about this article, about whether I had any meetings with the Hawks. Because they had checked their computer records and they could not find proof of such investigation taking place. He asked me where the meetings took place. The first meeting I told him took place in Sandton, happens to be some place in Sandton. The second meeting, and I told him the names of the two gentlemen who were present, I told him the second meeting took place at the
10 offices of the Hawks in Silverton. He then asked me their names, I told him the names of the investigators. He didn't seem to recognise the names. But he said that they have checked their computer records and there is no record of such investigation. He asked me to give him the numbers of those officers and I gave him the number and he promised to get back to me as soon as he got all the facts about the investigation. It must have been an hour or so later that he called back to inform me that in fact he has confirmed that there was... or firstly, those two people were employees of the Hawks, that they worked in a separate division in the Hawks and that the investigation took place before his time, he was not aware of it. But he had spoken to them and they confirmed that there was such an investigation and they told him that the status of the investigation was
20 that the matter had been submitted to the Public Prosecutor's office and they are waiting for a decision. And he undertook that they will give my attorney and I feedback as soon as was possible. I am sure that the feedback is on its way. I have not received it.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Chairperson, through your office we will try and help to get the feedback to that extent as soon as possible.

CHAIRPERSON: Yes, thank you.

ADV VINCENT MALEKA SC: Because it is unfortunate that a witness such as Mr Maseko would have a cloud hanging over him on a matter that had happened almost 13/15 years ago. It is something that we would ask the investigators to pursue.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Mr Maseko, we had dealt with matters of general nature that is of importance to the terms of reference that I had identified for the Chairperson. We are now going to go into the specifics. It may be a laborious exercise, but such is the nature of the proceedings. I had promised that I will come back to the CV and that is
10 where I am going to start in order to source out matters of specifics and details from you. Of immediate importance, in your CV relative to the proceedings of the Commission, is paragraph 2.5 on page 2 of Exhibit E1. Are you at paragraph 2.5 of your CV?

MR THEMBA MASEKO: Yes, I am, Chairperson.

ADV VINCENT MALEKA SC: And by the way, let me complete something about your CV which is important in order to place in context your current activities. In paragraph 2.2 of the same page, are you there?

MR THEMBA MASEKO: Yes, I am there.

ADV VINCENT MALEKA SC: You described yourself that as at August... no, from August 2017 to 2018 July... Let me repeat. From August 2017 to July 2018 you were the
20 Communications Director of Business Leadership SA.

MR THEMBA MASEKO: That's correct, Chairperson.

ADV VINCENT MALEKA SC: Who, there has been a public report that your contract with Business Leadership SA had come to an end.

MR THEMBA MASEKO: That's correct, Chair.

ADV VINCENT MALEKA SC: When did it come to an end?

MR THEMBA MASEKO: Chairperson, it was a one-year contract. It ended on the 31st of July 2018.

ADV VINCENT MALEKA SC: What are you doing since the end of that contract?

MR THEMBA MASEKO: At the moment I am self-employed, Chairperson. I am trying to get involved in the business space.

ADV VINCENT MALEKA SC: Alright. I just wanted to complete that part of your CV. I had asked you to go to paragraph 2.5.

10 **MR THEMBA MASEKO**: Correct.

ADV VINCENT MALEKA SC: There you talk about your employment as the Chief Executive Officer of GCIS. You say you started in 2008 and you ended in February 2011.

MR THEMBA MASEKO: That is correct.

ADV VINCENT MALEKA SC: The circumstances relating to the end of your office in GCIS is going to become a matter of importance that I would like to explore in detail later on. Can I then ask you, in so far as your career in the Public Service is concerned, relating to the GCIS, to turn to page 3 and reflect on one of the functional areas you identify in the first bullet point. You say that you were managing a presidential press conference and you were managing 450 staff and 21 offices with a budget of R480 million. Do you see that?

20

MR THEMBA MASEKO: Yes, I see it, Chairperson.

ADV VINCENT MALEKA SC: And the description of the budget looms large in your evidence. Now, can I ask you this, that amount of R480 million, what time period does it reference during your employment in the GCIS?

MR THEMBA MASEKO: The budget allocation for GCIS ranged between, during my tenure at least, between R400 and R500 million per annum. And that number is based on allocations that we get from National Treasury.

ADV VINCENT MALEKA SC: Yes.

MR THEMBA MASEKO: This is, just to be clear Chairperson, this is just covering the GCIS's operational budget. So, it does not include the other amount that we do as far as
10 procuring services on behalf of other departments – so, this is just what was in my budget.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Yes, in your statement and Chairperson I am running ahead, but I will come back – in your statement you said that Mr Ajay Gupta mentioned to you when you met him or in the course of a telephonic conversation a budget of R600-million, do you remember that?

MR THEMBA MASEKO: That's correct, yes, I remember that.

ADV VINCENT MALEKA SC: And you said that you were surprised about the fact that he knew about the budget?

20 **MR THEMBA MASEKO:** Yes, I was surprised Chairperson.

ADV VINCENT MALEKA SC: Can I ask you to square up the 2 amounts of the budgets that you referred – the 1 is R480- and the other R600-million?

MR THEMBA MASEKO: The R480, which ranges from here to here is the budget allocated to GCIS's mine department this is the amount I would have requested from national treasury and I'll be accountable for its expenditure. So, it will cover salaries of my staff, it will cover rental space, it will cover travel, offices and some of the programs that we are running, publications, etc. etc. as GCIS as a department.

ADV VINCENT MALEKA SC: So, that is an internal budget?

MR THEMBA MASEKO: That is an internal budget.

ADV VINCENT MALEKA SC: Chairperson, I am lost for description of how we can identify it for the present purposes – can we say budget 1? Is that convenient Chair?

10 **CHAIRPERSON**: Well, we can say Budget 1.

ADV VINCENT MALEKA SC: I don't want you to be confused with...

CHAIRPERSON: Ja, okay let's call it Budget 1.

ADV VINCENT MALEKA SC: I don't want you to be confused with the next round of budgets of R600-million.

CHAIRPERSON: Okay. All right, that is the R480-million?

ADV VINCENT MALEKA SC: Yes. My learned friend, Ms Hopner, who is well-known and who knows these things better than I do, he says *we should call it Operational Budget*, because that is the appropriate accounting [inaudible 01:01:47]. I think most people will relate to Operational Budget.

20 **CHAIRPERSON**: I thought I was going to say Mr Maseko should guide us as to, because he would have known what it was called. Operational Budget for GCIS.

MR THEMBA MASEKO: GCIS Chairperson yes.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: I am glad I failed Accounting Zero Chair. Then the R600-million budget – can you describe its relevance to GCIS and the connection between it and GCIS.

MR THEMBA MASEKO: Chairperson, when you look at the GCIS strategy plan, it will tell you what the department plans to do for a 12-month period and the amount of money we are going to spend and what we are going to spend it on. So, that is why you will come to a figure around R400-million, depending on which year you are talking about.

The R600-million amount that we are talking about now pertaining to Mr Ajay Gupta, the
10 money that GCIS spends on behalf of the department. So, this is just to be clear. Each
and every government department prepares a budget and in their budget, they have an
allocation that is set aside for communication purposes. They run all kinds of
communication activities as individual departments. However, individual departments
then, from time to time, identify a campaign that they would like to launch nationally and
they will then design that campaign and then come to GCIS and say *we need your
assistance* with regards to firstly just making sure the plan is aligned to a strategic plan
and plans of the government as a whole – there is proper alignment between
departmental messages and overall government messages. Secondly they will say we
may need assistance with regard to the creative aspect of this campaign – they will come
20 to us with ideas of what they want to do, but they would like input from GCIS and
obviously – GCIS had built a sizeable capacity in terms of scales. So, we are able to
assist them in that regard.

Then they will say these are the targeted audiences – in other words, these are the
people we want like to reach with this particular message, we need your assistance to

guide us to which are the more suitable platforms to reach communities. So, GCIS will come and say *okay, if your target audience is x, your budget is y – these are the platforms we think you should use*. Take an example they might say they want to communicate a message about how some residents or people who receive social grants in KwaZulu-Natal, the most remote parts of the country – we want to communicate to those people. So, we will say this advice – we think you should use Ukhozi FM, local community stations, radio stations, local community newspaper, also use Isolezwe and target a particular program on SABC1 and 2, because of the research that we conduct from time to time. So, we know how to reach audiences. So, we then say *okay, these are*
10 *the platforms that you need to use*. They will then say *okay, we are happy with this strategy* – there will be an agreement between us and the department and then lastly, our function will be then to procure the media space.

You will see in my affidavit I use the term media buy. That is essentially the point at which this agreement about the campaign message, target audience, creative side – then buying the advertising space in the newspapers. So, we will then agree that the platforms that we are going to be using, will say it is going to cost you x amount of money. The departments will then transfer to GCIS and we will then procure the media space on their behalf. So, an important point to make here is that, at any given point, at the start of every financial year, as a CEO of GCIS, I do not have a clue about how much each department
20 is planning to spend on advertising, because they would not have designed their campaigns at a particular point in time. So, the only time we have a sense of how much we will be spending in this media buying function, is when we have an aggregate of how many departments wants to do, which amount of media procurement we would have to do. So, I'd say halfway into the first quarter of the financial year, we will then have some idea of how much we could be spending for that financial year. So, that is how the system

works – Counsel, you must stop me, because I can go on forever, but I think I have answered the question.

ADV VINCENT MALEKA SC: No, I think that it is important as a witness volunteer and give information. My role is simply to guide you and so far I think you are doing well, but to be more specific, we are dealing about the media buying function of your department.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: As I understand your evidence, you say that part and parcel of your functions as the GCIS, is to buy media services from media houses on behalf of national departments?

10 **MR THEMBA MASEKO**: Yes, that's correct.

ADV VINCENT MALEKA SC: And as I understand your evidence, you have outlined the processes around which you procure media services on behalf of your client departments. Now, I don't want to waste time on those processes at this stage – I will take some time to ask you to identify them later on.

MR THEMBA MASEKO: Okay.

ADV VINCENT MALEKA SC: For the present purposes, that's a matter of detail that is not required from you now. The point is this – you have told the Judge that you will get a picture of the total media buying budget in the first quarter of each financial year. So, factually with reference to the approach is that we have made to you by Mr Ajay Gupta, which is around 2010 – September / October 2010 – we will come back to the specific
20 dates – by that time you would have had an appreciation of what was the annual media buying budget for your client's department?

MR THEMBA MASEKO: That's correct, yes.

ADV VINCENT MALEKA SC: Yes

CHAIRPERSON: Sorry Mr Maleka.

ADV VINCENT MALEKA SC: Yes Chair.

CHAIRPERSON: Mr Maleka has just said to you *I think you will get a picture of how much you will spend in the first quarter*, but I thought earlier on you've said about halfway through the year – am I right?

MR THEMBA MASEKO: No, I said halfway through the first quarter.

CHAIRPERSON: Oh, the first quarter.

MR THEMBA MASEKO: The first quarter, yes.

10 **CHAIRPERSON**: No, thank you then, thank you.

ADV VINCENT MALEKA SC: Thank you Chair. So, to the extent that there was a budget for media buying for 2010 financial year – that would have been appreciated by you during the first quarter of 2010?

MR THEMBA MASEKO: There would have been an idea, yes.

ADV VINCENT MALEKA SC: Will you be able to tell the Judge – to the best of your recollection – what was the budget for that financial year 2010 / 2011?

MR THEMBA MASEKO: The budget indicated was around R600-million for that particular year.

CHAIRPERSON: That is the 2010 / 2011 financial year?

20 **MR THEMBA MASEKO**: Yes.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Who from your perspective would roughly have knowledge of that amount?

MR THEMBA MASEKO: If you ask a head of communication of any department, I wouldn't know – if you ask the minister responsible for GCIS, I wouldn't know – so, that is information that would have – as a department – a figure for planning purposes. It is a figure that would have, internally within a department – so, it is not a figure that would have ordinarily went out to publish.

ADV VINCENT MALEKA SC: Thank you. Can I then take you back to Page 3? Oh, so by the way Chair, I've been asked to describe this second budget – the R600-million one.

10 **CHAIRPERSON:** Yes

ADV VINCENT MALEKA SC: As the media spend budget. The arguments are quite long – I may get lost...

CHAIRPERSON: Let's confirm with Mr Maseko if that is the correct label.

MR THEMBA MASEKO: That media spend budget?

ADV VINCENT MALEKA SC: Yes

CHAIRPERSON: Okay yes, that is the R600-million.

MR THEMBA MASEKO: That is the R600-million Chairperson.

CHAIRPERSON: Okay

20 **ADV VINCENT MALEKA SC:** So Chair, I will move between the media spend budget and R600-million budget. I get lost sometime. Mr Maseko, I am back at Page 3 of your CV and then I would like to get some more specifics from you about the last bullet point, just before paragraph 2.6 – you see there you describe one of your line function and duty

as the CEO of GCIS as follows: *as Government spokesperson; attending cabinet meetings and announcing cabinet decisions through by weekly press conferences. Speaking on behalf of government on policy issues; managing Government media relations; speaking at national and international conferences – do you see that?*

MR THEMBA MASEKO: I see that yes, correct.

ADV VINCENT MALEKA SC: How does it happen that as the CEO of GCIS, you will assume the role of being a Government spokesperson and also attend Cabinet meetings and announce Cabinet decisions?

MR THEMBA MASEKO: Well, the – Chairperson, the way the system is designed – is to
 10 make sure that there is proper alignment between what Cabinet says and what
 Government says on a regular basis – Government’s messaging to citizens is properly
 aligned. The job of CEO of GCIS was bleeding into and 1 is accounting officer of GCIS –
 it is dated there – managing day to day operations of GCIS. The second aspect was
 being Government spokesperson – so, as Government spokesperson of sitting in Cabinet
 meetings to communicate Cabinet decisions, yes, but also importantly to make sure that
 if there are policy issues that arise in between Cabinet meetings, we don’t necessarily
 always have to wait for a Cabinet meeting – we would address and deal with these issues
 and communicate on them, without having to wait for a Cabinet meeting. So, it was a
 system designed to make sure there is proper alignment between Government messages
 20 across the board and Cabinet decisions.

ADV VINCENT MALEKA SC: I have seen officials describing themselves as Cabinet
 spokespersons – is there a difference between a Cabinet spokesperson and a
 Government spokesperson?

MR THEMBA MASEKO: Well, the first difference is that – I think in my letter of appointment it was Government spokesperson – not Cabinet spokesperson. Secondly, the difference between Government spokesperson and Cabinet spokesperson is that a Government spokesperson can speak on matters beyond just Cabinet decisions. So, in other words there could be an issue arising pertaining to Government's reaction to – for example you could say election results in Zimbabwe and there would not be a Cabinet meeting and it is not possible to wait for a Cabinet decision – so, then an assistant is put in place to communicate with the Minister of foreign affairs, Minister in the presidency and draft a Government statement, without having to wait for a Cabinet meeting.

- 10 A Cabinet spokesperson's role on the other hand is purely a person who speaks on behalf of Cabinet and most of those posts internationally are held by people, whose job is just to be spokesperson of Cabinet. They just announce Cabinet decisions, but they have no responsibility for the overall Government communication function. So, mine was Government spokesperson – not Cabinet spokesperson.

ADV VINCENT MALEKA SC: Yes, thank you. Mr Maseko, just to conclude on that issue. When you stopped being this Chief Executive Officer of the GCIS, what happened to your role as Government spokesperson?

MR THEMBA MASEKO: Well – what happened to the role?

ADV VINCENT MALEKA SC: Yes, did you continue with that role or did it stop?

- 20 **MR THEMBA MASEKO**: Well, I stopped performing that function, because the 2 were linked during my time.

ADV VINCENT MALEKA SC: The 2 were linked?

MR THEMBA MASEKO: Were linked, yah.

ADV VINCENT MALEKA SC: Were linked, yah.

MR THEMBA MASEKO: Okay. That issue is going to become important at some point
Chair – we merely highlighted it for now.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: I think those who have received the statement of Ms
[inaudible 01:16:41] Williams, will understand the importance of the dual functions of the
head of GCIS and being a Government spokesperson. It is a matter that ought not to
worry you. I now have an appreciation of what you did as the Chief Executive Officer of
the GCIS. I'd like now to take you to your statement – the first affidavit, we now knows
10 that it begins at page 9 and I ask you to reflect on paragraph 2 of that statement and you
see that it is [inaudible 01:17:35] in the indirect form of speech or speaking – you have
explained to the Chairperson the context of this affidavit?

MR THEMBA MASEKO: That's correct.

ADV VINCENT MALEKA SC: I am not going to ask you to repeat it – I just wanted you to
confirm that whoever asked you as you have recorded directly in paragraph 2. Was for
the purposes that you've indicated and that was the purposes of the investigation by the
Hawks.

MR THEMBA MASEKO: That is correct yes Chairperson.

ADV VINCENT MALEKA SC: And in paragraph 3, you record that you've first made a
20 statement in response to the Secretary General – we have gone through that statement, I
am not going to take you back to it.

MR THEMBA MASEKO: That's correct.

ADV VINCENT MALEKA SC: And then in paragraph 4, you [inaudible 01:18:25] of the details of your experience with the Gupta family during your tenure as accounting officer and chief executive officer of the GCIS?

MR THEMBA MASEKO: That's correct.

ADV VINCENT MALEKA SC: Paragraph 5 is important and there you say: *I was approached by the Gupta family during your tenure as the accounting officer and chief executive officer of the GCIS8 and Government spokesperson – do you see that?*

MR THEMBA MASEKO: That's correct yes.

ADV VINCENT MALEKA SC: Now I would like to get to the details of that approach – all
10 I want to point out to you now, is that from paragraph 6, page 9 of exhibit E1 up to page 10, paragraph 9 – you give a background that we have dealt with. So, with your permission, I would like to gloss over those paragraphs – are you comfortable with that?

MR THEMBA MASEKO: I am comfortable Chair.

ADV VINCENT MALEKA SC: And we now begin to talk about the approaches that you have fore said in paragraph 5 – they start at page 10 Chairperson, paragraph 10 and he say – *around September – 2010, I received a call from Mr Ajay Gupta on my mobile number (he give the number, I am not going to repeat it applicably) requesting a meeting to discuss what he said was a new project, which he and his company were launching, which he indicated 'required Government support' – do you see that?*

20 **MR THEMBA MASEKO:** I see that Chairperson.

ADV VINCENT MALEKA SC: I'd like to ask you to be some few specific questions and I'll do so in bite size form, if you don't mind? And ask for your comment. At that point in time – I am talking September / October 2010 – did you know Mr Ajay Gupta?

MR THEMBA MASEKO: Yes Chairperson, I did know him.

ADV VINCENT MALEKA SC: Are you comfortable to tell the Chairperson how it came about that you knew him?

MR THEMBA MASEKO: Yes, I am comfortable.

ADV VINCENT MALEKA SC: Please do.

MR THEMBA MASEKO: Chairperson, one of my responsibilities as GCIS CEO was to be responsible for an agency called International Marketing Council, which is currently known as Brand South Africa and after my appointment as CEO of GCIS, I went through the list of board members and I realised that or discovered that he was one of the board members – not that I was necessarily looking for his name, I was just going through the list and his name was there and I have had several meetings or attended several meetings of the board meetings – in 1 or 2 of those meetings during my tenure, he did attend I think 1 or 2 of those board meetings and I met him there as one of the board members.

ADV VINCENT MALEKA SC: And I suppose at that meeting you may have exchanged some pleasantries or spoken to him?

MR THEMBA MASEKO: Well, yes Chairperson – I did have conversations with him and all of the board members at the time.

ADV VINCENT MALEKA SC: And you – unlike other witnesses – you won't be confused about who Mr Ajay Gupta is?

MR THEMBA MASEKO: No at all.

ADV VINCENT MALEKA SC: Then you said that he called you on a cellphone number? Do you know how he got the cellphone number?

MR THEMBA MASEKO: Well, with my interactions with him, I don't recall ever giving him the number, but it would have been easy to get my number, because as a board member of the international marketing council, my details were there and in all the media statements that we issued as GCIS and I issued as Government spokesperson – my number was always included there – so, my number was fairly public.

ADV VINCENT MALEKA SC: And then you say that he indicated to you that he needed to discuss a new project, he and his company were launching? Did he disclose at that point in time the nature of the company – its name and details to you?

MR THEMBA MASEKO: The nature of the conversation was essentially about a request
10 for a meeting to discuss a project and the project was about setting up a media company in the country, that will have interests in both print and electronic media.

ADV VINCENT MALEKA SC: I'll come back to a date when 1 of the media companies – more specifically, TNA was launched. It is a matter, which is common knowledge, because that date - when TNA Media was set up has been disclosed by the [inaudible 01:24:03] Group in a report, which has now been given to the Chairperson by Ms [inaudible 01:24:10]. It has also been disclosed in the liquidation application brought by Mr Manyi to liquidate amongst others TNA. But as far as you are concerned – do you know when TNA was established?

MR THEMBA MASEKO: If my memory serves me right I think it was established in the
20 latter part of 2010 – it could be – yah, I think it is the latter part of 2010, but I don't recall in fact – I don't know the exact date of the launch.

ADV VINCENT MALEKA SC: The date that I seem to recall and I thought I have it on hand here, but I don't is somewhere 6th November 2010. Does that resonate with you?

MR THEMBA MASEKO: I think that would be just about right – around that time.

ADV VINCENT MALEKA SC: Then you say that he indicated that he wanted to discuss with you the Government support, which he and his company required?

MR THEMBA MASEKO: That's correct.

ADV VINCENT MALEKA SC: Did he disclose to you – at that point, the first call – what sort of support was he looking at?

MR THEMBA MASEKO: He did not give me any specifics other than to say that he needed Government support for the project to succeed.

ADV VINCENT MALEKA SC: Did you ask him about it during that call – the first call?

MR THEMBA MASEKO: The first call I asked him if he was able to give more information
10 and he said *no, the best way is to meet face to face and discuss the project.*

ADV VINCENT MALEKA SC: Yes, and then I ask you to go to page 11.

MR THEMBA MASEKO: Yes sir.

ADV VINCENT MALEKA SC: Then I skip the 1st sentence of paragraph 11 – you have already talked about it and from the second sentence, you say the following: *I was also aware at the time that there were talks of the Gupta family's plans to enter the media sector, by establishing a newspaper and a television station. I, however, did not know any details in this regard at that time – do you see that?*

MR THEMBA MASEKO: I saw that Chair.

ADV VINCENT MALEKA SC: Fast forward – do you know what newspaper and
20 television station were established by the Gupta family?

MR THEMBA MASEKO: I subsequently got to know that their newspaper that they were launching was called The New Age I think.

ADV VINCENT MALEKA SC: Yes?

MR THEMBA MASEKO: And the television station was ANN7.

ADV VINCENT MALEKA SC: In paragraph 12 you say that I was reluctant to accede to Mr Ajay Gupta's meeting request, because I did not have any details of the project that Mr Ajay Gupta was referring to. Can I stop you there...?

MR THEMBA MASEKO: Yah.

ADV VINCENT MALEKA SC: ... and ask you to elaborate a bit for the Chairperson the basis of your reluctance, beyond the fact that you did not have details about the project.

MR THEMBA MASEKO: Chairperson, I – it is correct that I did not have details about the
10 project – however, Counsel, if you can go back to paragraph 11 above – I did state that
the were rumours already that the Gupta family was making moves to establish a
newspaper and a TV station – firstly and secondly, that the way the Gupta family was
dealing with Government officials was very untoward – in other words, the wanted to they
were using their connections, influence with senior politicians in Government to extract as
much contracts as possible from both Government and State owned entities. So these
rumours were circulating – so, when I heard that the way they were trying to get into the
media space – I did have some reservations, because I did anticipate that they could be
thinking of doing the same with my function and that's where the reluctance came about.

ADV VINCENT MALEKA SC: Then you say that, in spite your reluctance, you
20 nevertheless decided to meet in order to get a better understanding of the project?

MR THEMBA MASEKO: That is correct, yes.

ADV VINCENT MALEKA SC: Then you say in paragraph 13 that you ended your
discussion with him on a specific note and that is that you would meet with him?

MR THEMBA MASEKO: Yes, at the end of the conversation I agreed to meet – I must just say that the latter part of paragraph 12 is also important, because my approach was to interact and meet with all the stakeholders in the media space – all media owners, editors, journalists, newsrooms – so, it would have been difficult for me to simply refuse to meet them and yet meet owners of other media houses around the country. So, I thought in line with my overall approach to managing my portfolio, I should go and give them a hearing. Coming back to your question – at the end of that conversation – yes, we agreed to have a meeting so that I could actually hear what is it exactly that he wanted to discuss with me.

10 **ADV VINCENT MALEKA SC**: Was there an agreement between you and him as to where you will meet and when you will meet?

MR THEMBA MASEKO: We agreed on a date and he proposed he said it would be easier to meet in Saxonwold and that's where the meeting took place – we agreed to meet in Saxonwold.

ADV VINCENT MALEKA SC: Saxonwold?

MR THEMBA MASEKO: Chairperson, that is the residence of the Gupta family.

ADV VINCENT MALEKA SC: Yes. When did you meet with him – as far as you can recall?

20 **MR THEMBA MASEKO**: Chairperson, again my apologies – we try to, well, I try to access my diaries from GCIS, but as successful – so, I unfortunately can't give a specific date – I do recall the time of the meeting, which was I think 2 pm on that particular day, but I think it must be around I would say between May and July of 2010 – somewhere there.

ADV VINCENT MALEKA SC: I know the questions of dates is quite tricky, given the time when these events happened, but all I want to establish from you is after the call – more or less, how many days, weeks or months did it take to get to that meeting?

MR THEMBA MASEKO: I recollection will be that I think it must be between a week or 2 that such a meeting took place.

ADV VINCENT MALEKA SC: Between a week or 2?

MR THEMBA MASEKO: Yah.

CHAIRPERSON: I am sorry Mr Maleka – did you say Mr Maseko, it was around May, June, July?

10 **MR THEMBA MASEKO**: May, June, July – somewhere around that – yah.

CHAIRPERSON: And that is around?

MR THEMBA MASEKO: 2010 yah.

CHAIRPERSON: In 2010?

MR THEMBA MASEKO: yah.

CHAIRPERSON: Thank you.

ADV VINCENT MALEKA SC: Can it be, because in paragraph 10 you say that you got a call in September / October 2010?

MR THEMBA MASEKO: We will have to confirm that Chairperson.

ADV VINCENT MALEKA SC: Yes.

20 **MR THEMBA MASEKO**: I am pleased to hear that the Acting GGD of GCIS is coming to testify before the Commission and I am hoping Chairperson that they could help to

facilitate access to my diary, because all of those things I documented in my diary and we were hoping that we would also be able to access transcripts of the cellphone conversations between myself and Mr Gupta, so that we can put this matter to bed. Because – at the end of the day – all of these conversations must be existing somewhere in record.

ADV VINCENT MALEKA SC: Yes. Chair, I can say that we have sent the investigators to look at this issue.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: But for now, can you proceed on the premise and tell me
10 whether you are comfortable with it. That the meeting out that took place a week or so
after the call ...

MR THEMBA MASEKO: Yes, that much I can confirm.

ADV VINCENT MALEKA SC: Mr Maseko, I am going to skip paragraph 13 and paragraph 14, unless there is something of significance that you would like to bring to the attention of the chairperson with reference to those paragraphs.

MR THEMBA MASEKO: Well, paragraph 13 does refer to the choice of the venue and there Chairperson I tried to communicate the basic message that – at the time, the issue of Saxonwold Compound of the Gupta family was not an issue of public interest and I did not see anything untoward meeting them there and in any case, I deal with the
20 stakeholders in the media field either at my offices or their offices and restaurants – so, the issue of venue was not of particular concern to me and that's the message I tried to communicate on paragraph 13, and 14 just refers to the fact that I went to the meeting with the sole purpose of just trying to understand what exactly is it that he was planning to do and what he expected from GCIS.

ADV VINCENT MALEKA SC: Yes. Then I asked you to consider paragraph 15 – you say on the date of the meeting – as I was driving out of the office park lot (I assume that is the parking lot of the GCIS) ...?

MR THEMBA MASEKO: Yes, I think the building was called MidTown Building, but that is correct, yah.

ADV VINCENT MALEKA SC: Where was it?

CHAIRPERSON: Sorry Mr Maleka, please don't forget the question you wanted to put. Mr Maseko, I would ordinarily have thought that if somebody says he is a business person or whatever – wanted to have a meeting with a Government official, because he
10 or she wanted some business – I would have thought that ordinarily he would be the one who must come to the relevant Government officials to discuss the matter. I can't think of a situation where – if it is a somebody that maybe you know quite well – that you have had a lot of interactions with and maybe – there may be some other categories that I could image that maybe you could then meet in their home. I am just wondering whether it would have been normal to go an meet at the residence of somebody who wanted to do business, unless it is somebody – I don't know, somebody that maybe you might have had a lot of interactions with.

MR THEMBA MASEKO: Well Chairperson, the conversation went on for some time with him and at some stage I just decided to agree to the meeting – I will say that, without any
20 hesitation that I did not think too much into the venue, because I knew who I was – what type of person I was and a person could meet me either at his house, the office, my office, my house, but knowing who I am – the venue will not change why.

CHAIRPERSON: Okay, thank you.

ADV VINCENT MALEKA SC: The Chairman's question still remains – is it normal practice in the public service for persons who require Government support to meet outside the official premises of public service officials concerned? Is it normal business or employment practice?

MR THEMBA MASEKO: Chairperson, it is normal for meetings between public servants and members of the private sector to take place outside of official offices of either the company or Government – meeting in the private residence you could argue that it is a little bit abnormal, but as I say – at that particular point in time, I didn't see anything untoward, because I thought it was a meeting where I need to hear more to get more
10 about what he was talking about what he was talking about.

ADV VINCENT MALEKA SC: Yes. Chairperson, unless there is anything around paragraph 14 – I want to move to paragraph 15 and that is going to be a matter of controversy – I wonder if this is not an appropriate time to adjourn.

CHAIRPERSON: It may be. How long do you think you might take tomorrow? I am trying to see whether subject to everybody concerned finding it acceptable whether there is room to go on for about another 30 minutes or not, but just depends whether it suits Mr Maseko and it suits the legal team as well – I won't insist on it?

ADV VINCENT MALEKA SC: Chair, it will take me a bit of time to go through the details of the statement, so to give an indication I should be done by tea-time or shortly after tea-
20 time, if we begin at normal time, but if Mr Maseko is convenient we can start at half past 9.

CHAIRPERSON: Well I was also thinking we could start at half past 9 if it suits everybody, including Mr Maseko. Mr Maseko, would half past 9 be fine for you tomorrow?

MR THEMBA MASEKO: It will be perfect Chairperson.

CHAIRPERSON: ...and is that fine for the legal team?

UNIDENTIFIED MALE VOICE: That's fine.

CHAIRPERSON: Okay. Thank you. Oh sorry, Counsel for Mr Maseko – is that fine?

COUNSEL FOR MR MASEKO: That is most suitable, thank you.

CHAIRPERSON: Okay.

ADV VINCENT MALEKA SC: Chairperson, then we would ask you to firmly adjourn the proceedings.

CHAIRPERSON: Okay, Thank you very much. We'll adjourn until half past 9 tomorrow morning. Thank you Mr Maseko, you can come back tomorrow morning at half past 9.

10 **MR THEMBA MASEKO**: Thank you Chairperson.

COURT CLERK: All rise.